

## *Regional GM opposition as multilevel challenge?*

### *The case of Upper Austria*

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#### **Abstract**

*The paper develops an empirically bolstered argument challenging claims raised in the debate on multi-level governance of the European Union. In particular, it questions the notion of a demise of hierarchical governance by shedding light on the interplay of recalcitrant and compliant forms of political action, as regions emerge as political actors in the EU in their own right. To this end, the article scrutinizes a complex, multi-layered policy process unfolding in the wake of current attempts to render possible the co-existence of crop producers making use of genetically modified organisms and farmers who deliberately avoid the new technology. In the wake of this policy formation, various European regions emerged as major political actors and, in a rather uncommon move, assembled a protest network to challenge the European Commission's co-existence-policy. Besides giving a sketch of this movement the article will focus on the case of Upper Austria, who is a founding member and leader of the network, and the sole European region which has initiated an outright prohibition of agricultural biotechnology and thus provoked a legal confrontation with the Commission.*

#### **Multilevel aspects of a major European controversy**

The European Union's (EU's) agro-biotechnology policy constitutes an exemplary case of contested, multi-level governance. It sets a case of multi-level governance as it entails all levels of political decision-making, from the interplay of international bodies and agreements to supranational, national and, as will be emphasized in this article, regional polities. At the same time,

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the EU's governance of agro-food biotechnology is highly contested<sup>2</sup> (Seifert, 2006, forthcoming). Spearheading the oppositional wave is a group of Member States (MS) which, from 1999 to 2004, imposed a *de facto* moratorium on approvals of genetically modified organisms (GMO) and, up to now, maintain individual safeguard bans on certain GMOs already approved throughout the EU.<sup>3</sup> By obstructing the entire regulatory process recalcitrant MS have enormously augmented pressure on the architect of EU biotechnology policy, the European Commission, to design a set of consumer-friendly and, by international standards, highly restrictive regulations (Seifert, 2006). The *multi-level* nature of European biotechnology governance, however, also brings pressure to bear on the Commission to base EU biotechnology policy on a set of liberal axioms which conform to international free trade disciplines and ensure GMO-exporting countries, in particular the United States as world's largest GM-producer, access to the Common Market; thus, since the late nineties the US, left no doubts about its determination to take legal action against the political blockade at the World Trade Organization (WTO), which it finally did in August 2003, together with Canada and Argentina.<sup>4</sup> The resulting European regulation is therefore marked by both a high level of precaution and consumer transparency in order to accommodate popular reservations against biotechnology, and a set of regulatory doctrines in accordance with global free trade principles (Pollack/Shaffer, 2005).

It is these liberal doctrines which constitute the sticking point of the still on-going, internal European controversy on GMOs addressed in this contribution. The controversy revolves around the European Commission's current policy initiative to ensure the viable "co-existence" of GM- and non-GM crops and called into action a set of policy-protagonists hitherto merely marginally

<sup>2</sup> Distinguishing the term from conflict which, more often than not, pervades most domains of public policy, Ansell and Vogel define *contested governance* as denoting "the particularly intense and broad-based conflict about the *foundational assumptions and institutional frameworks* through which a policy domain is governed." (Ansell/Vogel, 2006, p.11, italics added)

<sup>3</sup> The *de facto* moratorium was set up in summer 1999 by France, Greece, Denmark, Italy and Luxembourg. In 2000 and 2001 respectively, Austria and Belgium joined the blockade group. Between 1997 and 2000, national safeguard bans had been decreed on 13 occasions by Austria (3), France (2), Germany (1), Italy (4 under the Novel Foods Regulation) Luxembourg (1), Greece (1) and the United Kingdom. (1) The UK later revoked its ban. In no case scientific evidence provided by MS to warrant the measures was deemed convincing by scientific committees consulted by the Commission. Even so, in January 2005, Hungary, and in March 2005, Poland invoked safeguard measures on their behalf.

<sup>4</sup> Although until now (October 2006) no final ruling has been tabled in the WTO case, an intermediary report of the WTO Dispute Settlement Body proves the complainants right finding that, with the blockade on GMO approvals and the persistence of national safeguard bans, the EU has violated the "undue delay" provisions of the Sanitary and Phytosanitary (SPS) Agreement. While the report does not address the EU's rigorous regulatory regime itself it denounces its malfunctioning caused by MS' recalcitrance. It thus increases the Commission's legal legitimacy in future bids to lift national safeguard measures.

involved in the controversy: European regions. A group of regions currently embark on a campaign to rule out GMO cultivation on their territories, which is clearly at odds with the Commission's liberal approach. While the Commission aims at *making possible* a side-by-side of GM- and non-GM types of production, compatible with global free trade disciplines, campaigning regions stipulate their right to self determination, notably to completely rule out the unwelcome technology.

This multi-level controversy will be assessed against the backdrop of two tenets often raised in current debates on multi-level governance: First, the idea of a *lessening of hierarchy* within multi-level policy-arrangements and second - associated with this idea - the belief in the *retreat of the state* from policies assembled and governed at multiple levels (Bache/Flinders, 2004, pp.200-2). Within the globalization debate the thesis of the state's demise is well established (e.g. Strange, 1996). A similar claim for the EU context, though less radical, is to be found in the more specific discussion on EU multi-level governance pertinent to this article; thus, e.g. Hooghe and Marks (2001) argue that European integration, by diffusing authority across national and supranational institutions, has weakened the territorial state to the advantage of European regions, which steadily gain power in the European decision-making process.<sup>5</sup>

At first look, the novel and contentious forms of regional involvement in the co-existence controversy seem to support this diagnosis. Regions seemingly act on their own behalf and circumvent state governments to directly challenge the Commission's policy. At closer inspection, however, this version does not hold. As will be shown, national governments still figure as key actors in EU multi-level politics, and, rather than signaling substantial change, the regions' overt challenge to the Commission fits into an - indeed uncommon - pattern of contentious politics.

This criticism will be supported by focusing on one key actor in the regional movement, the Austrian county Upper Austria. Upper Austria is a case in point, as it is not only a leader of the regional anti-GM movement but also the only region to work on a statutory *ban* on agricultural biotechnology. By adopting this recalcitrant stance Upper Austria brought the conflict with the Commission to a head. Even so, a closer look reveals that Upper Austria's posture, up to now, leaves the EU's emerging co-existence regime untouched.

<sup>5</sup> "Two developments have been decisive in creating multi-level governance in Europe over the past half century. European integration has shifted authority in several key areas of policy making from national states up to European-level institutions. Regionalization in several European countries, including the most populous ones, has shifted political authority from the national level down to subnational levels of government." (Hooghe/Marks, 2001, p.xi, italics in the original)

What nevertheless comes to the fore, when analyzing the episode, is the prevalence of forms of contention and alliance building rather atypical for regional politics.

The following analysis of this policy-episode will, first, give an outline of the Commission's recent co-existence policy, putting it into the context of the broader turn in biotechnology policy of recent years. It then goes on to portrait Upper Austria's unusual reaction to this policy and the rapid evolution of the regional protest network highlighting new forms of contentious action and networking strategies adopted by the regions' alliance and, finally, discusses these novel features, rationales and the tacit ambiguities of this movement in the context of EU multi-level governance. The materials employed to empirically support the analysis are derived from news reports, policy and legal documents and a series of interviews with key actors. They were assembled in 2005 and 2006 the course of research in Austria, Italy and Belgium and a number of key events in the evolution of the EU's co-existence policy and its regional counterpart.

### Co-existence and its discontents: regulatory and regional developments

The Commission's co-existence policy constitutes a late development in the wake of the general reversal in the EU biotechnology policy which had already set in by the late nineties. (see also: Levidow/Boschert, 2006) By autumn 2002, as first key element of the emergent regulatory framework, the amendment of the Deliberate Release Directive was completed and, by mid-2003, the European Parliament (EP) adopted directives laying down the rules for the labeling of foods and animal feed and thus eventually finalized the new regulatory framework.<sup>6</sup> In May 2004, finally, the Commission lifted the *de facto* moratorium by approving the first GM crop since late 1998.<sup>7</sup> Less successful were its attempts to lift the national bans. A Commission proposal submitted to the Environmental Council in June 2005 to force MS to revoke their national safeguard measures was foiled by a vote of qualified majority. As the plaintiffs in the current WTO procedure successfully targeted these national bans this decision only aggravates the Commission's predicament.

<sup>6</sup> Its main pillars are the Directive on Deliberate Releases into the Environment (2001/18/EC) repealing Directive 90/220/EEC and the regulations on GM food and feed (EC 1829/2003) and traceability and labeling (EC 1830/2003).

<sup>7</sup> Nevertheless, up to mid-2006, only eight GM varieties had gained approval. Significantly, all authorizations since then had to be issued by the Commission since MS failed to vote either in favour or against. Also indicative of the unresolved situation is the fact that each of the eight approvals since July 2004 applies only to the use of products as food and feed, not to their cultivation. Apparently, the Commission shies away from the sensitive issue of commercial *cultivation*, which is also at the heart of the co-existence debate.

Main features of the new regulatory frame are a high degree of environmental precaution and rigorous measures to ensure consumer protection and confidence. The reform echoes the shock to public trust shattering the Commission in the wake of the BSE-crisis and mirrors the centrality consumer concerns assumed in the wake it; consequently, the normative centerpiece of this legislations is consumers' *freedom of choice*, which lays the normative ground for a costly and highly complex labeling system.

The invigorated precautionary principle as well as strict labeling and traceability provisions are well in accordance with popular attitudes and product policies of major retailers. This also holds for a new product category deriving its added value from its *GM-free* status. Coping with consumer unease and NGO pressure major European retailers declared their shelves clear of GM products both spurring the need to legally define "pure" products and committing themselves to secure their supply. Specialized agricultural producers, organic farmers in particular, who offer to meet this new demand, faced the same challenge: From summer 2000, crops in several European countries had been found "contaminated" by GM-admixtures, which highlighted both the difficulty producers face to uphold a *GM-free* status and the menace such incidents pose to their credibility, thus economic survival. These events ushered in a shift from a debate over biotechnology's *physical* risks to a controversy over the *economic* downsides of its introduction into Europe's diversified consumer markets. Regulatory action was called for. Measures were to be taken to avoid such incidents or - in case this failed - to establish liability regimes.

### The Commission's approach to co-existence

The amended Directive on Deliberate Releases provided a first legal basis for such measures without, however, giving clues as to how to carry them out.<sup>8</sup> By 2002, in its "strategic vision" for the European life sciences, the Commission committed itself to clarify possible options for the co-existence of non-GM and GM crops but it was not before summer that the Commission's regulatory approach took its final shape.

Instead of drawing detailed legislation DG Agriculture under Commissioner Franz Fischler, then *chef de file* of the emerging co-existence policy, issued guidelines, leaving it up to MS to find practical solutions (CEC, 2003). The reason given for adopting a subsidiarity approach was that MS

<sup>8</sup> Art. 26a of Directive 2001/18 only states that "MS may take appropriate measures to avoid the unintended presence of GMOs in other products."

appear best suited to deal with locally varying conditions. Key objective of the co-existence recommendation was - corresponding to labeling policy - to defend the *freedom of choice*, in this case the freedom of producers, catering to consumers: If consumers ought to enjoy the freedom of choice between GM and GM-free products, farmers must be granted the right - and technical prerequisites - to offer GM-free certified produce.

The guidelines invoke a number of regulatory principles, which, in part, reflect the Commission's objective of reinforcing the liberal regime of the Single European Market and comply with international trade disciplines respectively. At the same time, they highlight major underlying causes of the multi-level conflict on co-existence (Herdegen, 2005).

The proportionality provision, for instance, stipulates that measures should not exceed what is required for keeping GM-traces below tolerance thresholds in order to avoid unnecessary burdens for any production type. As the purpose of threshold levels is to establish a compromise between the policy objectives of avoiding GMO admixture on the one hand, and allowing for some inevitable intermingling of GM and GM-free materials on the other, the provision underlines the rationale of the co-existence approach to *make possible* the use of GM crops and rule out the erection of new obstacles.

Of similar function is the distinction between the general approval process, in particular, environmental and health risk assessment under the newly set up regulatory framework, and approval procedures under yet to be defined co-existence regimes. The Commission emphasized that national co-existence measures must not interfere or create redundancy with the supranational approval process - once a GMO has been scientifically cleared for marketing and cultivation throughout the EU, no further risk assessment is to be run on that organism on the authority of a national co-existence regime.

Finally, the provision demanding that management measures should fall on the individual farm, and that farms planning to set up regional arrangements should come to terms with each other on their own initiative - is to be understood as liberal response to the often voiced call for "GMO-free zones," entire regions banning GMO cultivation. Unable to entirely drive out agricultural biotechnology off the EU, opponents had progressively resorted to advocate GMO-free zones arguing that only such closed areas could avoid contamination through dispersal of pollen, seed and organic materials. Instead of ruling out the demand, the Commission responded by circumscribing the conditions under which such zones could be legally established; whereas their *political* demarcation was out of the question for being at odds with the unified

approval procedure, the Commission affirmed the right of *individual* actors to contractually commit themselves to GM-free zones which should function to seal off certifying systems for GM-free produce. To be stressed is the private character of the arrangement: Although MS are supposed to set up co-existence guidelines no further political entity ought to interfere into actual management practices.

The Commission charged a small expert group with managing the co-existence agenda and coordinating regional, national, and supranational co-existence policies (CEC, 2005). By early 2006, it delivered a first report to the Council and the EP on the experience gained in the MS which was issued in March 2006, and announced a further progress report was for 2008 (CEC, 2006a,b).<sup>9</sup> The Commission's approach of merely coordinating the exchange of information supplied by the MS did not only meet with approval.<sup>10</sup> Staunch opponents of agro-biotechnology, lobbying for its downright expulsion, contested the very idea of co-existence which, ultimately, seeks to make GM cultivation possible. More moderate critics disapproved of the Commission's unwillingness to enact binding legislation arguing that its subsidiarity approach left vital questions unresolved and simply shifted the problem to the MS. The Commission nonetheless persisted in its approach, also after Mariann Fischer-Boel had taken office from Franz Fischler in 2004. Speculations on a possible reversal of the Commission's co-existence policy in terms of a binding regulation were abated after the release of the report and the latest European conference on co-existence where Fischer-Boel reaffirmed the Commission's decision not to draw up European co-existence regulations.<sup>11</sup>

### The Austrian policy-development

In the European anti-GM wave, Austria's status is remarkable. The small, middle-European state is among the most vigorous promoters of strict biotechnology regulations in the EU while, domestically, taking all pains to shield

<sup>9</sup> The report can only refer to a limited number of national models as, by early 2006, only Germany, Austria, Denmark, Portugal, and the Czech Republic had notified their national co-existence regimes, while in the Netherlands, UK and Spain regulations were about to materialize. Elsewhere, as in France, authorities proved rather reluctant to share information on their approaches. (Interv. DG Agriculture 8.7.05, Brussels) In most new MS standards are still being developed. A TAIEX-seminar in February 2005 in Vienna, for instance, aimed at disseminating information on evolving regulatory approaches to the new MS. For a critical normative account of the German model see Herdegen 2005, for a policy account on Germany see Boschert and Gill (2005, p.288), for Denmark, Toft (2005, p.297), and for the Netherlands, Schenkelars (2005, p.315).

<sup>10</sup> Aside from the common drawbacks of an approach of loose coordination which renders the Commission's staff dependent on cooperation with national authorities.

<sup>11</sup> "Co-existence of genetically modified, conventional and organic crops - Freedom of choice," 4-6 April 2006, Vienna ([http://europa.eu.int/comm/agriculture/events/vienna2006/index\\_en.htm](http://europa.eu.int/comm/agriculture/events/vienna2006/index_en.htm))

against the introduction of GM crops into agriculture.<sup>12</sup> The origin of this stance goes back to the mid nineties when, triggered by an attempted and - in terms of public exposure - disastrous GMO release in early 1996, a sudden and intense public mobilization led to a popular initiative in April 1997, that brought a resounding victory of GMO opponents. The mobilization had been supported by the powerful Austrian yellow press, which maintained its anti-GMO stance ever since. Public opinion, as evinced by countless opinion surveys and asserted by the popular press, is staunchly anti-GM to a degree such that nowadays virtually no public decision-maker dares to speak out in favour of the technology's deployment in food and agriculture.

Hostile public opinion finds its expression in national policy, which, as a principal motive, pursues the goal to pre-empt *any* GMO release into the environment even if intended for experimental purposes. Any government responsible for a first release would suffer sensitive losses in popular support. Indeed, in spite of some costly attempts made by public research institutes, to date no such release has yet taken place in Austria.<sup>13</sup> As to commercial GMO growing Austria is "protected" by its bans just applying to the three maize-species approved for commercial cultivation in the EU.<sup>14</sup> Apart from this defensive strategy, Austria recently took up increasingly active policies critical of agro-food biotechnology at the European level; thus, the Austrian government declared biotechnology a major focus of its EU presidency in the first term of 2006 (Pröll, 2006). As a first step, in the Council of Environmental Ministers on 9 March 2006, Austria instigated a debate on the scientific and political procedures of the EU approval process, which, since the lifting of the *de facto* moratorium in 2004, has provoked much criticism from MS. Further, in April 2006, Austria hosted two major events in EU biotechnology policy; first, a big European conference designed to contribute to the evolving European co-existence policy, second, an EU expert conference on the precautionary principle.<sup>15</sup>

12 For a comprehensive reconstruction of the Austrian controversy see Seifert, 2002.

13 There remains, it has to be noted, some concealed ambivalence with the official stance of entirely barring GMO-releases; thus, the Austrian Government, in a few cases, still supports research projects dealing with biotechnologically engineered plants.

14 The three types of GM maize trade under the names T25 (Bayer Crop Science), Bt-176 (Syngenta) and MON 810 (Monsanto). In addition, on 23 January 2006, Austria banned GM oilseed rape GT73 (Monsanto). GT73, in contrast to the maize varieties, is among the GM crops approved after the lifting of the political moratorium in 2004. Also in contrast to the maize varieties, the rape variety is not approved for cultivation, only for import and processing. Austrian authorities justified their decision with the risk of genetic contamination, and the, in their view, inadequate EU risk assessment. As most others after May 2004, this authorization came in spite of strong opposition from a number of national Environment Ministers.

15 1. "Co-existence of genetically modified, conventional and organic crops - Freedom of choice," 4-6 April 2006, Vienna, 2. "The role of precaution in GMO policy", 18 - 19 April 2006, Vienna.

Government (consisting of the conservative Austrian People's Party *ÖVP*, and the Freedom Party) and parliamentary opposition (Greens and Social Democrats) conspicuously concur in their denouncing of agro-food biotechnology. In spite of parliamentary disputes on the subject at times flaring up there is, at best, minor division between political parties. The *ÖVP*, representing farmers' interests, for a time, found itself in a delicate situation as it sought to balance the interests of organic farmers, vigorously denouncing biotechnology, and conventional agriculture with its stakes in preserving the option to resort to GMOs in the remote future. Meanwhile, however, even this claim has virtually vanished and Austrian agriculture seems to renounce biotechnology in general.

One reason for this subtle change of attitude probably lies in the altered European situation: Agro-food biotechnology is highly unpopular in the most of the Union and nothing suggests a change in trend. To date, only Spain and, to a lesser degree, Germany have endorsed the commercial cultivation of GM crops, major food retailers have banned GM products, and by far most European farmers voluntarily abstain from planting GMOs for concern of not finding a market; hence, still relatively little European pressure is currently brought to bear on Austria to embrace agro-food biotechnology.<sup>16</sup> In fact, Austria might benefit from its rigorous policy due to which Austrian products have a competitive edge in export markets for providing special guarantees of being GM-free.<sup>17</sup>

A second, more important, factor explaining the rather aversive attitude towards genetic technologies manifest in Austrian agricultural policy hinges on the favorite status assigned to organic farming. With roughly 10 % of farmers embracing this alternative production type, Austria is among the European champions in this respect (See: Groier/Gleirscher, 2005). The large share of organic farmers is due to a policy development, which set off in the early nineties in the wake of the debate on Austria's accession to the EU. As both the quality of food and the insecure fate of Austria's farmers, featuring a high share of "uncompetitive" small-holding and mountain peasants, crystallized as decisive issues in these debates, the promise to support organic farmers was a

16 This might change in the aftermath of the pending WTO ruling which will declare national safeguard measures as unlawful and thus possibly increase the Commission's clout to lift them. A first attempt to do so, however, failed in the Council of Environmental Ministers in summer 2005, when a majority of MS voted down the Commission's proposal.

17 Since Austria, already in late 2001, has passed the lowest ceiling for GM-contamination of crop seeds in Europe and established a accordingly rigorous control system, Austrian production of Maize seed boomed in recent years as international demand for certified GM-free maize is on the rise. (Interv. Austrian Ministry Agriculture and Environment 26.04.2005, Vienna)

way for policy-makers to both gain public acceptance for leading the country into the Union and strategically protect an important political clientele; furthermore, Austrian retailing chains pioneered the marketing of "bio"-products, thus establishing regular demand for organic produce and, seemingly, confirming the viability of organic agriculture in a market economy.<sup>18</sup> In the longer term, organic farming became the "sacred cow" of Austrian agricultural policy so that anything which might corrupt the sector tends to provoke aversive reactions by policy-makers.

#### A regional approach to co-existence

In spite of Austria's highly precautionary stance towards the molecular technology, the Austrian regions (or *Länder*) also figure significantly in this policy field. From early on, some regions have gone to great lengths to set up their proper policies with respect to GMOs in agriculture. This tendency was augmented and extended to all regions with the Commission's co-existence initiative in 2003, when Austria became the only MS to charge its regions with the setting up of local co-existence regimes. Up to now, eight out of nine regions have established co-existence models and had them notified by the Commission.<sup>19</sup> Considering the substantial administrative effort the elaboration of these local regimes requires, the process conveys some impression of the political prominence the issue enjoys at both the national and regional level.

The fact that, in Austria, it is the regions who are to determine their proper co-existence regimes is not obvious. The explanation might be sought in Austria's federal constitution; in certain respects the *Länder* enjoy relative political autonomy, and as agricultural matters belong to their prerogatives it appears logical to assign the co-existence agenda to them. Conversely, it is questionable whether a national co-existence regime, consuming less time and resources at sub-national levels, would not have been more feasible.<sup>20</sup>

<sup>18</sup> In actual fact, however, Austrian organic farming still largely depends on state subsidies. While public subsidies for the conventional farmer average 23 % of a farmer's total revenue (or 80 % of net income), for the average organic farmer they account for 31 % (or 90 % of net income). Besides specific subsidies conditioned on employing certain ecological methods, organic farmers also benefit to a high degree from environmental subsidies and special aids for disadvantaged regions as a major share inhabits the wide mountainous parts of Austria. (BMLFUW, 2004)

<sup>19</sup> These *Länder* are Burgenland, Carinthia, Salzburg, Tyrol and Vienna, recently joined by Lower Austria and Styria. Still reluctant to put forward its approach is only Vorarlberg. The particular case of Upper Austria will be outlined in detail shortly.

<sup>20</sup> Compare, for instance, with Germany which, in spite of its federalist constitution, worked out co-existence regulations at the national level.

Furthermore, the distribution of administrative competencies between federal and country level is not as clear cut. In fact, it was through political decision by the federal government, not by constitutional automatism, that this legislative division of labor came about.

#### Early regional initiatives and Upper Austria's separate course

An important element facilitating this decision was nevertheless the eagerness of some regions to act against agricultural biotechnology on their own initiative, years before the Commission had come forward with its co-existence initiative. By the late nineties, particularly *Salzburg* and Upper Austria went through intense debates turning around the idea of entirely barring the use of GM crops on their territory. *Salzburg* was leading in this respect. An alliance of local environmental NGOs and organic producers pressurized the local government to enact a ban on agricultural biotechnology, and for some time the government indeed considered to do so. The claim was popular with the local population. *Salzburg* has the highest portion of organic farmers among Austrian regions, features some spectacular alpine natural parks and, much depending on tourism, lives on its reputation of offering savage, pure nature to the guest. A lasting barring of biotechnology from farming practice would have well completed that picture. Yet, contrary to initial announcements, from 2001 on, the local government became somewhat hesitant to promote the idea of a region-wide ban, which its legal service had found incompatible with national and EU legislation and thus untenable.<sup>21</sup>

Upper Austria's policy evolution took a different course. Even though there was no local activist network to lobby for a country-wide ban, a statutory ban was indeed put forward. In late 2002, the country government tabled the draft of a "Genetic Engineering Prohibition Law," which should be limited three years.<sup>22</sup> Immediately after its publication in early 2003, the regional government submitted the law for notification to the European Commission which, on 2 September in the same year, denied approval.

The refusal had to be expected; a blank veto arbitrarily imposed on all GMOs intended for agricultural use, including transgenic animals, is at odds

<sup>21</sup> Interv. Chamber of Agriculture 30.5.2005, Salzburg.

<sup>22</sup> Gentechnik-Verbotsgesetz 2002 - Ö. GTVG 2002 "Landesgesetz, mit dem der Anbau von gentechnisch verändertem Saat- und Pflanzgut sowie der Einsatz von transgenen Tieren zu Zwecken der Zucht sowie das Freilassen von transgenen Tieren insbesondere zu Zwecken der Jagd und Fischerei verboten wird" Provincial Law which prohibits the cultivation of transgenic seeds and crops as well as the use of transgenic animals for purposes of breeding, hunting or fisheries.

with key principles of EU regulation. It obviously collides with the case-by-case principle which requires any GMO to be assessed individually and, more importantly, annuls, the EU approval procedure. For comparison: Those MS who had invoked bans on various GM plants had justified this step with properties specific to each of these organisms, not for the mere fact that they had been genetically modified. Upper Austria thus mounted an even more radical challenge to the EU's regulatory system than MS' safeguard bans.

MS complied with EU regulations by justifying their derogations with the safeguard clause of the Deliberate Release Directive, that allows for *ex post* bans in case new scientific information hints at health hazards thus far ignored.<sup>23</sup> Upper Austria with its regional ban deviated from harmonized EU legislation and therefore had to refer to Article 95(5) of the EC Treaty, which allows for deviations from Community law provided they are substantiated by new scientific evidence for health or environment risks or regional vulnerabilities. Upper Austria claimed to offer such evidence by referring to a scientific study, commissioned by Upper Austria and the Federal Government, which came to the conclusion that, due to the possibility of gene flow in Upper Austria's peculiar agro-ecological make-up, the introduction of agricultural biotechnology was untenable (Müller, 2002). This attempt, however, failed. After having consulted the European Food Safety Authority (EFSA) to assess the validity of the scientific claims, the Commission issued a negative notification. In the light of EFSA's assessment, the Commission concluded that neither the information provided by Upper Austria did constitute new scientific evidence nor that Austria had proven the existence of a problem specific to the region.

The way in which Upper Austria reacted to the refusal was as exceptional as strategically thought through. Immediately after the Commission's announcement the regional government took two key decisions. It decided not to accept the Commission's verdict but to dispute it at the European Court of Justice (ECJ), and it embarked on a Europe-wide campaign encouraging regions to declare themselves GM free as Upper Austria had done. Both decisions were linked. On the same day the regional government submitted its complaint to the ECJ, 4 November 2003, it officially presented the regional network with a kick-off conference in Brussels, already bringing together 10 supporting regions.

<sup>23</sup> Under Directive 90/220/EEC, Art. 16 constitutes this "safeguard clause," with its successor Directive 2001/18/EEC it is Art. 23. The fact that, with the exception of the UK, all MS who had issued national safeguard bans maintain their measures up till now, disregarding the EFSA's converse scientific opinion, makes for major frictions between MS and the Commission. These are aggravated by the opinion of the WTO Dispute Settlement Panel who found this unsettled situation to violate international trade law and thus clearly confirmed the Commission's and EFSA's viewpoint.

How did these unusual decisions come about? Inquiring into their causes one meets with at times changing sets of local actors pursuing a tough stance on GMOs and a receptive environment featuring a broad consensus on the undesirability of biotechnology. In an initial phase, the drafting of the law and - by commissioning the mentioned coexistence study - its bestowal with scientific legitimacy<sup>24</sup> was driven by the initiative of a regional government official and Freedom Party member who appears to have had a particular interest in the issue but also met with the full backing of all political parties in the regional parliament. Later, after the regional election on 28 September 2003, the hitherto ruling coalition government of Socialist Party and ÖVP dissolved to be replaced by a new coalition government of the Greens and ÖVP - a constellation unique to Austria, where the Greens are in opposition throughout. While a link between the Greens' holding of office and Upper Austria's tough stance on agricultural biotechnology is frequently suggested, close observers involved in the policy process deny such an influence, pointing at the virtual unanimity among political parties that long preceded the current coalition.<sup>25</sup> This view is further supported by the fact that the strategy to combine its recalcitrant reaction with a European networking initiative had been laid out in the days immediately following the Commission's rebuttal on 2 September, thus weeks before the regional elections. In these days, the idea quickly gained shape within a regional-supranational actor network. The Upper Austrian Liaison Office to the EU in Brussels already stood in contact with a number of regional representations, first of all Tuscany, which proved equally disposed to launch a European initiative.<sup>26</sup> Hence, when the first visible actions followed in November 2003, the Greens just needed to jump on a bandwagon to be perceived as key drivers of the initiative.

### The "GM-free network" of the European Regions

The decisions had instant consequences. By legally challenging the Commission Upper Austria had committed itself to the ban, all the more so as the country's government had repeatedly assured the domestic public to stay

<sup>24</sup> Since the requirement of a scientific justification for any restriction is a key element of European and international regulation of biotechnology, Upper Austria keenly stresses the scientific foundation of the ban by referring to an approving expert's report. (Müller, 2002) Interestingly, the author of the quoted study is a staunch opponent of agricultural biotechnology and active member of Global 2000, an NGO pivotal in organizing the popular anti-GM movement.

<sup>25</sup> Interv. Administration - Department of environmental affairs, 13.4.05, Linz; Office Landesrat Dr. Stockinger, government Upper Austria 14.6.05 Linz; EU Liaison Office of Upper Austria, 7.7.05 Brussels.

<sup>26</sup> Interv. EU Liaison Office of Upper Austria, 7.7.05 Brussels. Tuscany is a pioneer among European regions opposed to agricultural biotechnology too, as, in 2000, it announced a statutory ban on GMOs.

its course. Also, its networking strategy worked out quickly. While the network quickly attracted further members, the Upper Austrian ban and the networking initiative received extensive coverage in the international NGO press emphatically applauding the regional revolt.

The major organizational tasks were carried out by the Brussels Liaison Offices of Upper Austria and Tuscany respectively, who quickly found to a division of labor, with Upper Austria focusing on regions in Northern Europe and Tuscany on the European South. Campaign organizers had no difficulty finding allies to join the network. As shown in Figure 1, in the period between the initial conference until end 2005 the number of members tripled.<sup>27</sup> Initiators also sought to directly lobby the European Commission, particularly after the taking over of the new Commission under José Manuel Barroso. Main thrust of lobbying, involving direct talks between Upper Austria's governor Pühringer and Commissioners in charge, was to urge the Commission to reconsider its co-existence-policy in terms of a tightening of sanctions against "GM polluters," a strict liability regime and enhanced rights of regions to endorse far-reaching regulation banning GMOs from their territories. The movement emphasized its claims by actively seeking media coverage through news releases, press conferences etc. thus promoting its "narrative" regarding an appropriate co-existence-regime.<sup>28</sup>

### Flexible networking

Aside from attracting new regional participants the organizers also sought to forge alliances with a range of other institutional actors, members of the EP, for instance, who proved sympathetic to their concerns and provided a link to parliamentary debates. Other affiliates offered assistance of their own accord. The Assembly of European Regions (AER), a lobbying organization working to foster cooperation among European regions, began to attend the network in September 2004.<sup>29</sup> At about the same time, Friends of the Earth Europe

<sup>27</sup> Ibid. While the readiness of regions from countries already beforehand outstanding for their GM opposition could be taken for granted, the challenge for organizers was to rally support of regions in countries which, so far, had not been among major GM antagonists. Still, as can be seen from Figure 1, most regions belong to countries of the first category, Austria, Greece, Italy, France and Germany. In general, newly joining members came from such states, while rallying regions from, in terms of biotech-opposition, lukewarm countries proved difficult. A notable exception constitute the British and some Spanish regions. Apparently, organizers were unsuccessful in mobilizing Polish and maintaining German support.

<sup>28</sup> Regions usually draw domestic attention for their engagement. The meeting in Florence in February 2005 which resulted in a common "charter of the regions" even raised some foreign medias' interest. See: Toscana et al., 2005; Kempf, 2005a

<sup>29</sup> AER (2004). Regions from the EU but also from accession countries and the European periphery are eligible for membership in the AER.

(FoEE), an environmental NGO and foremost critic of genetic engineering at supranational level, became involved.<sup>30</sup> A notable example of this open networking strategy, even extending beyond Europe, is the region of *Bretagne*, which works on setting up a special relationship with the Brazilian State of *Paraná* to guarantee a steady supply of GM-free soy.<sup>31</sup>

Evidently, the network's style of political action - its flexibility in creating alliances with a whole range of potentially useful allies, its lobbying the supranational decision-makers while addressing the broader public with storylines borrowed from the protest discourse of the ecological movement - remind very much of the action repertoire of new social movements, which, in regional politics, marks a novel style of political action.<sup>32</sup> In fact, the regional network has difficulties to distinguish itself from a concurrent NGO-driven movement fostering "GM free zones." In contrast to this campaign pulling together any local initiative to ban GM cultivation from a given territory - and therefore attaining a much higher number of "GM-free zones" - the network of European regions took steps as *state-actor*, on the basis of its *legal* authority.<sup>33</sup> Underlining its constitutional status, the regional network aimed at making a more tangible impression on supranational policy makers than would have been possible to non-state actors. And indeed, the Commission, in its intermediary report on the coexistence agenda's progress, albeit briefly, mentioned the regional network, while the manifold respective NGO-initiatives went unnoticed (CEC, 2006a, p.5).

As to the joining regions, a number of common reasons account for their readiness to enrol in the network which vary depending on their political outlook and ecological and social situation. For some, the barring of GMOs from agriculture follows from an ambitious environmental agenda, others stress the

<sup>30</sup> FoEE was and is a key voice in the European biotechnology debate maintaining an office in Brussels since 1991. (<http://www.foeeurope.org/GMOs/Index.htm>) Its "FoEE Biotech mailout" is one of the principal information resources on critical developments since late 1995. In contrast to Greenpeace, the second, big transnational NGO and anti-GMO campaigner, FoEE has less coordinative powers, as its national members are locally rooted and rather loosely associated to the umbrella organization, and therefore puts emphasis on research, dissemination and strategizing rather than on activism.

<sup>31</sup> Since Europe, to sustain its supply of animal feed, almost entirely depends on soy imports from nations investing into biotechnology, the Brazilian state of *Paraná* offered itself as a source of GM-free soy by deliberately barring the cultivation of GM-crops. Required for this transatlantic arrangement to be feasible is the guarantee of steady demand for GM-free soy, justifying the extra-costs of GM-free production and trade, which *Bretagne* agreed to assume. (Kempf, 2005b; See also: GM-free Regions Network, 2005)

<sup>32</sup> (<http://www.gmofree-europe.org/>)

<sup>33</sup> In contrast, "(S)ocial movements can be thought of as collectivities acting with some degree of organization and continuity outside of institutional and organizational channels for the purpose of challenging or defending extant authority, whether it is institutionally or culturally based, in the group, organization, society, culture, or work order of which they are a part." (Snow et al., 2004, p.11) For an analysis of the GM-opposition as new social movement see: Ansell et al., 2006.

symbolic attraction of GM-free regions for tourism, others in turn might seek to gain popularity vis-à-vis their local voting public.<sup>34</sup> Most prominently figure substantial economic interests as the quest to protect the local peasantry or local systems of identity preservation.<sup>35</sup>

### Upper Austria's collision course not emulated

Then again, what differs among regions is their capacity to carry out meaningful political measures. Regions in the network vary considerably in constitutional status and power vis-à-vis federal governments. While the provinces of Austria, Germany, Spain and the United Kingdom enjoy some degree of autonomy, the political competencies of French or Greek regions are negligible and commonly don't exceed declaratory functions.<sup>36</sup> What is striking, however, is the fact that even among regions at an equal footing with Upper Austria in political terms, none took similar steps to enact a prohibitive law. Even countries of equal constitutional status (e.g. Wales) did not embark upon a similar course. And the German *Land Schleswig-Holstein* even deserted the alliance in September 2005 after it had become apparent that regions had no discretion over the decision to rule out agricultural biotechnology<sup>37</sup> (Fig. 1). In this respect, Upper Austria remains isolated, in spite of intensely soliciting for support within the network.

### Upper Austria in the Federal Context

Upper Austria, with its minor revolt, not only manoeuvred itself into a somewhat solitary position within the regional network, which it had helped to set up. We see a similar picture when we look at the region's standing within the Austrian context. With respect to both the national response to the emerging European co-existence policy and the policies adopted by other Austrian *Länder* Upper Austria holds an exceptional position.

<sup>34</sup> The Upper Austrian government, for instance, runs the anti-GMO campaign "Ich bin so frei," calling on local farmers to declare themselves GM-free. A government sponsored campaign is also run in Carinthia.

<sup>35</sup> At the third Conference of the network 3-4. February 2005 in Florence, 19 members (see Fig. 1) set out the reasons for their participation. Most of them (13) quoted an economic reason: the protection of local seals of quality. 11 regions mentioned the local prevalence of small scale agriculture, 6 supported organic farming, and 6 ran ambitious sustainability policies. (Author's protocol, 4 Feb. 2005)

<sup>36</sup> In fact, Greece is not composed of "regions" but "prefectures," which is why Greek regions are not counted as individual associates of the GM-free network; instead, Greece as a whole counts as one member.

<sup>37</sup> In its justification the local government pointed to the ECJ's negative ruling on Upper Austria's Prohibition Law. (Schleswig-Holsteinischer Landtag, 2006)

The federal attitude regarding Upper Austria is marked by some ambiguity. On the one hand, the federal government proved sympathetic to Upper Austria's stubborn course; thus, it officially supported the region's complaint at the ECJ. This supportive stance is not surprising, rather seems to follow from Austria's disobedient posture in the EU. On the other hand, however, federal authorities are key in setting up a national co-existence strategy *in accordance* with the Commission's propositions. Examining the institutional process makes two points clear. First, the federal state by no means withdrew from the design of regional co-existence policies; instead, by passing on the co-existence agenda to provincial governments, it capitalized on ongoing regional initiatives and, later, kept some degree of control over the process by resuming a coordinative role. Second, it reveals the fact that Austrian biotechnology policy still aims at sustaining harmony with the Commission's regulatory philosophy.

Although Austria was the only MS to assign its regions with the task of setting up their proper co-existence regimes, we nonetheless have reasons to talk of a *national* co-existence strategy: First, regions became policy makers owing to federal decision.<sup>38</sup> Second, while regions accomplished the bulk of administrative and juridical work, the federal state kept playing a pivotal role in the policy process by coordinating regional policies both among regions and with the EU.

One nodal point of this national strategy is constituted by a sub-committee of the "*Landesagrarrreferentenkonferenz*" (LAK), which unites federal and regional agricultural experts in order to engage them in a steady dialogue.<sup>39</sup> The subcommittee convened for the first time in early February 2003 (months before the Commission issued its final recommendations) and, since then, updated country authorities as to supranational and sub-national developments. The expert debate thus gave way to a proper dynamic among *Länder*, observing, imitating, matching up and competing with each other.

The hub of the national co-existence strategy is made up of a working group within AGES,<sup>40</sup> an agency (formerly public, meanwhile out-sourced) charged with providing scientific expertise relating to sanitary aspects of agri-

<sup>38</sup> The decision was, in fact, preceded by juridical debates. Critics argued that, as GM products fall under the authority of the federal law on biotechnology, the agricultural uses of such products should be regulated at the federal level. (Interv. Ministry of Agriculture and Environment 3.5.2005, Vienna)

<sup>39</sup> The LAK, or "Association of the Country Agricultural Advisors," itself unites the upper echelons of federal and provincial decision makers in agricultural policy.

<sup>40</sup> "Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH" Austrian Agency for Health and Food Safety.

cultural and food production. The working group, directed by the agency's long-standing specialist on seed policy, is the authoritative voice in the LAK sub-committee and functions as intermediary between EU and regions. Its contribution to the Austrian regulatory process are both coordinative and scientific in character. In terms of coordination, AGES advises regional authorities in order to make sure their provisions be at the same time in harmony with EU regulations and as restrictive as locally demanded, which usually means to bar agricultural biotechnology altogether. On the face of it, these goals are contradictory. In fact, however, a mixture of restrictive measures as liability schemes, rigid information requirements and the technology's public denouncing results in social barriers virtually impossible to overcome for potential applicants.<sup>41</sup> In this way, the national aim of barring GMO releases is attained too.

#### Domestic dynamics of emulation

As noted, with the exception of the *Länder Vorarlberg* and Upper Austria, all regions have meanwhile set up their proper co-existence-regimes, which were accepted by the Commission, while being as rigorous as to forestall commercial GM cultivation in the foreseeable future. At the same time, as can be seen from Figure 1, by now, apart from Upper Austria, seven Austrian provinces have joined the network, lobbying the Commission for issuing even tighter regulations and recognizing the right of regions to rule out the new agricultural technology on their ground.

Arguably, such an approach mirrors a double strategy if not a double standard. On the one hand, regions took pains to set up pre-emptive regulations, narrowly escaping EU censure, on the other, they hooked up to a protest campaign against the Commission's liberal co-existence guidelines. Then again, while joining the network does not require much more than executing a declaration of intention, the major substance of policy-making in the regions rests with the juridical work required for setting up co-existence regimes.

To look more closely into this process is revealing. As provincial authorities designing co-existence regimes did not act in isolation but engaged in an interchange of information through the LAK sub-committee, certain regional policies came to be emulated. In order to reduce decision costs most local governments followed those provinces who most quickly came up with highly

<sup>41</sup> Although these strict regional co-existence regimes have been notified by the European Commission so far, the fact that most critical comments concerned their questionable "proportionality" is telling. (Interv. DG Agriculture 8.7.05, Brussels)

restrictive models, which they nevertheless had successfully reviewed by the Commission. The *Land* to soon distinguish as a forerunner was Carinthia, which came up with sophisticated legislation allowing for the agricultural use of GMOs in theory while blocking it in practice. (Kärntner Landtag, 2004a) Carinthia openly acknowledged to have written the law with a view to Upper Austria's shipwreck with its Prohibition Law. (Kärntner Landtag, 2004b, pp.1-2) The lesson drawn was that the putting in place of a GM-free zone was only feasible by making the most - in terms of restriction - of what was possible within the supranational legal framework. After Carinthia had successfully passed the notification test and enacted its "Precautionary Law" in October 2004, the model came to be hailed by national authorities as the regional approach to follow, which indeed led other regions to emulate it.

The region of *Salzburg* provides a telling example. *Salzburg* passed its proper "Precautionary Law" at about the same time as Carinthia. The two laws show only minor differences: Instead of the "duty to give notice" Carinthia imposes on potential applicants for a commercial GMO release, *Salzburg* promotes the slightly more restrictive approach of issuing (or withholding) authorizations.<sup>42</sup> Largely, *Salzburg*'s law corresponds to the Carinthian act. Hence, *Salzburg*, which had been most determined to pass a blunt prohibition of GM agriculture in the early phases, has switched to a stance which, at least formally, is in harmony with EU regulations. In fact, this switch in legislative strategy corresponds to a change in orientation. While up to mid 2003 *Salzburg* was geared to Upper Austria's course of action, under the impression of the Commission's negative response it changed this strategy to, since then, align with Carinthia. Although enacting the law almost simultaneously with Carinthia, in the course of the law-making process *Salzburg* had drawn on, indeed largely taken over, Carinthia's preparatory work, which had been clearly ahead at that time.<sup>43</sup> The same holds for the major part of Austrian regions which, with some variation, emulated either *Salzburg*'s or Carinthia's approach. Most importantly, however, no region (apart from *Salzburg*, which finally dropped the idea) ever copied Upper Austria's Prohibition Law; thus, in the context of Austrian regions, Upper Austria, steadfastly upholding its prohibitive legislation, finds itself in a similarly remote position as with respect to its allies in the GM-free network of European regions: united in protest, but going it alone in court.

<sup>42</sup> Carinthia's "Anzeigepflicht" vs. *Salzburg*'s "Bewilligungspflicht."

<sup>43</sup> Interv. Office of the Government of *Salzburg*, Department for Agricultural Matters, 30.5.05 *Salzburg*.

### Conclusion: conspicuous regional recalcitrance - tacit multilevel compliance

The evolution of the EU's co-existence policy is ongoing and as yet far from an endpoint. European MS and regions still work on the technical, legal and institutional provisions required for such a policy to work. Beyond the poorly understood ecological dynamics of seed and pollen dispersal and the complexities of food logistics, that stand in the way of properly segregating production lines, there is a range of social imponderabilities - possibly new scandals, caused by "GM-contaminations" - which might have a bearing on the future shape of European co-existence regimes and, once set in place, jeopardize their stability. Finally, there are international constraints and developments, which probably will have an impact the Union's co-existence scheme. The outcome of the WTO proceeding against the EU *de facto* moratorium will be indicative of the degree of political pressure brought to bear upon the EU to enable the technology in spite of widespread disdain. Likewise uncertain is the further fortune of the European regions' GM-free network. Being a protest and lobbying network aimed at impacting upon the European co-existence policy, the association naturally stands and falls with this policy.

Nevertheless, the case illustrates patterns of political action relevant to a debate on European multi-level governance. At the face of it, the GM free movement of the regions appears to confirm those who believe in a significant turn in supra-sub-national relations reflected in a new regional aptness, ability and readiness to directly confront the supranational centre without resorting to MS' governments as intermediaries. At closer inspection, the case tells us a more sober story. The capacity of the regions to autonomously decide on green biotechnology proves tightly constrained as it depends, firstly, on their constitutional status and, secondly, on the connivance of federal governments. Whether regional or federal governments account for co-existence policies is determined constitutionally and at federal level respectively. So far, Austria is the only country to assign its provinces with the respective responsibilities - a federal decision - and even in Austria the pursuit of regional policies is coordinated, in effect guided, by the federal administration. As to the other regions in the network, their impact on the design of operative co-existence policies is minor and their political prerogatives at times hardly exceed the right to issue declarations of intent. And even in this respect most regions correspond with MS general political outlook, as most supporters of the network belong to notoriously oppositional states. Conversely, the technical co-existence policies in these countries, which are commonly designed and implemented by central

governments' agencies, correspond to supranational guidelines; hence, most probably, co-existence policies in harmony with the Commission's liberal approach will take root across European agricultural policies. This approach does not preclude the possibility of GM free zones, as they are called for by the regional movement, but such zones will need to be established on a contractual basis, negotiated between individual farmers. Further visibly "political" restrictions or blatant prohibitions of GM agriculture can be ruled out.

This mismatch between the ostensible claim of regional autonomy and the technocratic reality of co-existence policy is epitomized by the case of Upper Austria. As regards its legal proceedings with the ECJ, anything else than a rejection of its stance would have come as a surprise, as virtually all observers agreed. In fact, on 5 October 2005, the ECJ dismissed Upper Austria's complaint. Even policy-actors involved in designing the strategy of going the whole hog with Upper Austria's Prohibition Law, had expected this outcome and admitted that, for such a case, they had already prepared a draft of an alternative law, modeled after the Carinthian and *Salzburg* acts;<sup>44</sup> consequently, the day after the ECJ's decision, the Upper Austrian County Council tabled an alternative "Precautionary Law," to be submitted for notification by the Commission within the same month.<sup>45</sup> (Fig. 1) The new law, which stipulates the same combination of restrictive measures most other regions had meanwhile included in their regulations, was presented as "second best solution" to the local public, designed to bar agricultural biotechnology in the future without bluntly prohibiting it. At the same time, in late November 2005, the local government also filed an appeal against the ECJ decision. The ECJ decision on the appeal is expected for late 2006.

Asked for the proximate motives for sustaining its recalcitrant demeanor, even though it was expectable that, ultimately, Upper Austria would have to comply with EU standards, policy actors conceded to actually have conducted a "pilot project," to find out how far a region determined to curb agricultural biotechnology could go.<sup>46</sup> The fact that the pilot project remained an isolated attempt implies that the great majority of involved actors prefers to play by the - supranational - rules.

The ubiquity of the tacit consensus as to the necessity to comply with the Commission's approach is indeed striking. For the debate on multi-level governance, claims about a withering away of the nation state's key role in the

<sup>44</sup> Interv. EU Liaison Office of Upper Austria, 7.7.05 Brussels.

<sup>45</sup> Upper Austria also appealed against the ruling. A decision by the ECJ is expected by end 2006.

<sup>46</sup> Ibid. Verbatim: "Versuchsprojekt."

Union's multi-level structure and a blurring of the latter's essentially hierarchical make-up cannot be confirmed. Rather it seems to affirm the softer version of a *transformation* of the state's role in multi-level governance, "as state actors develop new strategies of coordination, steering and networking to protect, and in some cases enhance state autonomy." (Bache/Flinders, 2004, p.197)

Nevertheless, the case offers interesting features which might hint at new trends in political behaviour on the part of sub-national actors. Firstly, the "GM-free network of the European regions" is seemingly the first regional initiative to oppose agro-food biotechnology. To be sure, provincial governments are not the first state-actors to join the European biotechnology-opposition. MS governments were key in upholding the political moratorium against any new approvals and still are the most momentous antagonists of the European Commission. With the GM-free network, however, European regions entered this arena for the first time.

Secondly, by engaging in the network regions embark on political strategies akin and symbiotic to those commonly employed in new social movements, as, for example, the double strategy of mobilizing public criticism against EU regulation at the local level while, simultaneously, lobbying the Commission. (Ansell et al., 2006) Very much in the manner of oppositional NGOs (from whom they are nevertheless eager to distinguish themselves) regional governments both stir and exploit popular sentiments against the genetic technology and employ similar means in order to rally popular support. What adds to the resemblance with new social movements is the network's exceptional degree of flexibility in forging alliances. The rapidly expanding network of the regions itself testifies to this unusual plasticity, furthermore its strategy to join forces with external actors as, for example, the EP and a range of NGOs. The combination of flexible networking, populist appeal and supranational lobbying arguably marks a new style in regional politics.

Whether this style will become a more common feature of the EU's "contested multi-level governance," possibly also in other policy fields, remains an open question. In any case, a major result of this strategy is the rather high publicity of the network. As was argued, however, one should not take the ostensible recalcitrance of the movement, most strikingly highlighted by Upper Austria, at face value. Behind the scenes, the major political motive is to comply with EU policy: Instead of giving evidence of any tangible change in multi-level governance, the case rather confirms the status quo.

Figure 1: Evolution of the GM-free network of European regions<sup>47</sup>

Date	Activity	Joining Regions	Count
Nov 4, 2003	Founding Conference in Brussels, MEP Graefe zu Baringdorf presents initiative opinion in the EP	<i>Aquitaine</i> (FR), Basque Country (SP), Drama-Kavala-Xanthi (GR), <i>Limousin</i> (FR), <i>Marken</i> (IT), <b>Upper Austria</b> (AT), <i>Salzburg</i> (AT), <i>Schleswig Holstein</i> (GER), <b>Tuscany</b> (IT), Wales (UK)	2 + 8 = 10
Apr 28, 2004	Follow-up conference Linz	<i>Burgenland</i> (AT), Scottish Highlands and Islands (UK)	12
Sep 14, 2004	Press conference in Strasbourg, Assembly of European Regions (AER) and EP join in.		
Oct 10, 2004	Council of Ministers deliberates on task force on co-existence by 10 MS, common declaration	AT, IT, PL, GR, GER...	
Feb 4, 2005	Conference of the Regions, Florence, 2 <sup>nd</sup> declaration	<i>Bretagne</i> (FR), Styria (AT), <i>Emilia-Romana</i> (IT), <i>Ile-de-France</i> (FR), <i>Lazio</i> (IT), <i>Liguria</i> (IT), <i>Poitou-Carentes</i> (FR), South Tyrol (IT), <i>Sardinia</i> (IT)	21
Apr 7, 2005	Round Table in Brussels representatives of network and Commissioner Fischer-Boel	ENAE (umbrella organization of Greek prefectures, GR), Carinthia (AT), <i>Midi-Pyrénés</i> (FR), <i>Umbria</i> (IT), Asturia (SP)	26
Apr 14, 2005	Country Governor Pühringer meets Commissioner Dimas		
Apr 2005		<i>Centre</i> (FR), <i>Bourgogne</i> (FR)	28
May 17, 2005	Conference organized by AER & FoEE in the EP		
May 20, 2005	Country Governor Pühringer in PL, talks with Malopolska, no result		
July 13, 2005		Vienna (AT)	29
Aug 11, 2005		<i>Haute Normandie</i> (FR)	30
Sep 5, 2005	<i>Schleswig-Holstein</i> leaves network	Molise (FR)	30
Oct 5, 2005	Negative decision by ECJ on Upper Austrian Prohibition Law		
Oct 13-26, 2005	Regional representatives undertake trip to <i>Paraná</i> /Brazil.		
Nov 8, 2005	Upper Austrian submits its new Precautionary Law for technical notification.		
Nov 28, 2005	Upper Austria decides to appeal against ECJ ruling		
Nov 24, 2005		Tyrol (AT)	31
Nov 30, 2005	Conference and Declaration of <i>Abruzzo</i> (IT), <i>Basse-Normandie</i> (FR), <i>Pays-de-la-Loire</i> (FR), <i>Piemont</i> (IT), Lower Austria (AT)		36
March 2006	Regional representatives undertake trip to <i>Paraná</i> /Brazil.		
Apr. 4-6, 2006	EU-Conference on Co-existence, Vienna, "Freedom of Choice"		
Until November 2006	Four new regions access the network	<i>Franche-Comté</i> (FR), <i>Nord Pas de Calais</i> (FR), <i>Rhônes-Alpes</i> (FR), <i>Menorca</i> (SP)	40

<sup>47</sup> Courtesy of EU Liaison Office of Upper Austria, and Direction Générale des Services, Region Bretagne (January 2006) Until autumn 2006 four more regions accessed the network. (Information request local government Upper Austria October 2006).

## References

AER (Assembly of European Regions) (2004), 'How to become a GMO free region' *AER-ARE-VRE-Dossier* Vol. 6 (summer 2004).

Ansell, Christopher; Rahsaan Maxwell; Daniela Sicutelli (2006), 'Protesting food: NGOs and political mobilization in Europe', in Ansell, C. and D. Vogel (eds.), *What's the Beef? The Contested Governance of European Food Safety*, pp. 97-122, Berkeley: MIT Press.

Ansell, Christopher, David Vogel (2006), 'The Contested Governance of European Food Safety Regulation', in Ansell, C. and D. Vogel (eds.) *What's the Beef? The Contested Governance of European Food Safety*, pp. 3-32, Berkeley: MIT Press.

Bache, Ian, Matthew Flinders (2004), 'Conclusions and implications in Multi-level Governance', in Bache, I. and M. Flinders (eds.) *Multi-level Governance*, pp. 195-206, Oxford: Oxford University Press.

BMLFUW (Federal Ministry of Agriculture, Forestry, Environment and Water Management). (2004), *Grüner Bericht*, Vienna: Federal Ministry of Agriculture, Forestry, Environment and Water Management.

Boschert, Karin; Bernhard Gill (2005), 'Germany's agri-biotechnology policy: precaution for choice and alternatives', *Science and Public Policy*, Vol. 32 No. 4, August, pp. 285-292.

CEC (Commission of the European Communities) (2003), *Commission Recommendation of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the co-existence of genetically modified crops with conventional and organic farming*. Brussels, 23 July 2003.

CEC (Commission der European Communities) (2005), 'Commission Decision of 21 June 2005 establishing a network group for the exchange and coordination of information concerning co-existence of genetically modified, conventional and organic crops. (2005/464/EC) *Official Journal of the European Union* (L164) (24.6.2005).

CEC (Commission of the European Communities) (2006a), *Communication from the Commission to the Council and the European Parliament. Report on the implementation of national measures on the coexistence of genetically modified crops with conventional and organic farming*. Brussels, 9.3.2006, COM (2006) 104 final, (SEC(2006) 313).

CEC (Commission of the European Communities) (2006b), *Commission Staff Working Document. Annex to the Communication from the Commission to the Council and the European Parliament. Report on the implementation of national measures on the coexistence of genetically modified crops with conventional and organic farming*. Brussels, 9.3.2006, SEC(2006) 313 (COM (2006) 104).

GM-free Regions Network (2005), *Declaration of Rennes*. (<http://www.gmo-free-regions.org/political-discussion-events/gmo-free-regional-governments.html>, retrieved at 11 April 2006)

Groier, Michael, Norbert Gleirscher (2005) *Bio-Landbau in Österreich im internationalen Kontext. BdI: Strukturerwicklung, Förderung und Markt*. Vienna: Bundesanstalt für Bergbauernfragen.

Herdegen, Matthias (2005), 'The Coexistence of Genetically Modified Crops with Other Forms of Farming: The Regulation by EU Member States in the Light of EC Law', *Journal of International Biotechnology Law*, Vol. 2, No. 3, pp. 89-98.

Hooghe, Liesbet; Gary Marks (2001), *Multi-Level Governance and European Integration*, New York: Rowman and Littlefield Publishers.

Kärntner Landtag (2004a), 'Gesetz vom 21.10.2004, mit dem das Gesetz über die Regelung von Maßnahmen der Gentechnik-Vorsorge (Kärntner Gentechnik-Vorsorgegesetz - K-GtVG) erlassen und das Kärntner Landwirtschaftsgesetz geändert wird', *Kärntner Landesgesetzblatt* (25 January 2005), pp. 21-27.

Kärntner Landtag (2004b), *Erläuterungen zum Entwurf eines Gesetzes, mit dem das Gesetz über die Regelung von Maßnahmen der Gentechnik-Vorsorge (Kärntner Gentechnik-Vorsorgegesetz - K-GtVG) erlassen und das Kärntner Landwirtschaftsgesetz geändert wird*. Document (22.4.2004), Government of Carinthia.

Kempf, Hervé (2005a), 'Vingt régions européennes défient Bruxelles en refusant les OGM', *Le Monde* (February 14) p. A1.

Kempf, Hervé (2005b), 'La Bretagne et la Paraná, au Brésil élaborent une stratégie alternative', *Le Monde* (February 14) p. A1.

Levidow, Les; Karin Boschert (2006), *Coexistence or Contradiction. Agricultural Biotechnology versus Alternative Agricultures in Europe*. Milton Keynes: Centre for Technology Strategy Open University, (Unpublished manuscript).

Müller, Werner (2002), *GVO-frei Bewirtschaftungsgebiete: Konzeption und Analyse von Szenarien und Umsetzungsschritten. Endbericht Im Auftrag des Umweltressorts des Landes Oberösterreich und des Bundesministeriums für Soziale Sicherheit und Generationen*. Vienna: Federal Ministry of Social Security, Generations and Consumer Protection.

Pollack, Mark A.; Gregory Shaffer (2005), 'Biotechnology Policy: Between National Fears and Global Disciplines', in Wallace, H. and W. Wallace (eds.), *Policy-Making in the European Union*, pp. 329-51, Oxford: Oxford University Press.

Pröll, Josef (2006), 'GM: Austrian Presidency', *Parliament Magazine*, Vol. 20, (20 February) pp. 55-57.

Toscana; Oberösterreich; Marche; Aquitaine; Lazio; Bretagne; Euskadi; Wales; Ile de France; Poitou-Charentes; the Highlands and Islands; Schleswig Holstein; Région Limousin; Emilia Romagna; Burgenland; Steiermark; Sardegna; Drama-Kavala-Xanthi; Bolzano; Salzburg (2005), *Charter of the Regions and Local Authorities of Europe on the Subject of Coexistence of Genetically Modified Crops with Traditional and Organic Farming*. Declaration Florence 4 February 2005.

Schenkelaars, Piet (2005), 'Regulating GM crops in the Netherlands: precaution as societal-ethical evaluation', *Science and Public Policy*, Vol. 32, No. 4 (August) pp. 309-316.

Schleswig-Holsteinischer Landtag (2006), *Kleine Anfrage des Abgeordneten Karl-Martin Hentschel (Bündnis 90/Die Grünen) und Antwort der Landesregierung*. Printed Matter, Government Schleswig-Holstein (5 January 2006).

Seifert, Franz (2002), *Gentechnik - Öffentlichkeit - Demokratie. Der österreichische Gentechnik-Konflikt im internationalen Kontext*, München: Profil.

Seifert, Franz (2006), 'Synchronised national publics as functional equivalent of an integrated European public. The case of biotechnology', *European Integration online Papers*, Vol. 10, ([http://eiop.or.at/eiop/index.php/eiop/article/view/2006\\_008a/26](http://eiop.or.at/eiop/index.php/eiop/article/view/2006_008a/26)).

Seifert, Franz (2006, forthcoming), 'Divided we stand: The EU as dissonant player in the global governance of agro-food biotechnology', *UNU-IAS Working Paper*, Yokohama: UNU-IAS. (<http://www.ias.unu.edu/publications/workingpapers.cfm>)

Snow, David A.; Sarah Soule; Hans-Peter Kriesi (2004), 'Mapping the Terrain', in Snow, D. A.; S. Soule and H.-P. Kriesi (eds.), *The Blackwell Companion to Social Movements*, pp. 3-16, Oxford: Blackwell.

Strange, Susan (1996), *The retreat of the state. The diffusion of power in the world economy*, New York: Blackwell.

Toft, Jesper (2005), 'Denmark's regulation of agri-biotechnology: co-existence bypassing risk issues', *Science and Public Policy*, Vol. 32, No. 4, August, pp. 293-300.