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European Union

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## **STATEMENT OF THE COUNCIL'S REASONS**

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Subject: Position of the Council at first reading with a view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory

- Statement of the Council's reasons
- Adopted by the Council on 23 July 2014

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## **I. INTRODUCTION**

The Commission adopted its proposal for a Regulation amending Directive 2001/18 as regards the possibility for Member States to restrict or prohibit the cultivation of GMOs in their territory on 13 July 2010<sup>1</sup>.

The Economic and Social Committee adopted its opinion on 9 December 2010. The Committee of the Regions adopted its opinion on 28 January 2011.

The European Parliament adopted its position at first reading on 5 July 2011<sup>2</sup>.

## **II. OBJECTIVE**

The aim of the proposal is to provide a legal base in the EU legal framework on GMOs in order to allow Member States to restrict or prohibit the cultivation of GMOs that have been authorised at EU level. Those restrictions or prohibitions may cover all or part of the territory of a Member State.

## **III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING**

1. The European Parliament adopted 28 amendments to the Commission proposal. Although the general direction of those amendments was followed by the Council in certain key respects (e.g. the introduction of specific grounds on which to base national restrictions), in most other respects the Council has preferred a different approach.

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<sup>1</sup> Document 12371/10 ADD 1 - COM(2010) 375 final.

<sup>2</sup> Document 11037/11.

The Council's position at first reading also includes a number of changes other than those envisaged in the European Parliament's position.

The Commission has indicated that it can accept the Council's position at first reading.

2. Like the Commission, the Council considers that the main purpose of the proposal is ensuring the smooth functioning of the internal market, whilst allowing Member States to make their own decisions regarding the cultivation of authorised GMOs. To the extent that other considerations are involved, such as those relating to the environment, these are secondary in relation to the main purpose. For this reason, the Council's position is based on Article 114 TFEU, not Article 192 TFEU.

Although the proposal was initially made in the form of a regulation, on closer examination it appeared more appropriate to change the legal form to that of a directive, albeit one without a transposition period given the optional nature of the provisions in question. The legal form of a regulation would have been appropriate if it had been the intention to create rights and impose obligations directly on economic operators, whereas the logic of the proposal (both in its original form and as amended by the European Parliament) is to give Member States the right to decide on cultivation, without actually requiring them to take any decisions restricting cultivation at all.

With a view to ensuring the least possible disturbance to the internal market whilst at the same time facilitating the authorisation process of GMOs, the Council considered it appropriate to provide for a mechanism whereby Member States could agree on restrictions with economic operators (via the Commission). Such a mechanism is likely to provide the greatest possible legal certainty, both to operators and to Member States. Much of the new text that has been inserted by the Council is technical in nature and relates to the procedure for ensuring that this mechanism is capable of working in practice.

In the event that agreement with the economic operator cannot be reached, Member States will be entitled to adopt measures restricting or prohibiting cultivation, subject to certain important conditions. Like the European Parliament, the Council has also considered it appropriate to include a non-exhaustive list of grounds in the text. Here, the main differences between the Council's text and that of the European Parliament are in terms of emphasis and the level of detail. The Council considers it essential to ensure that the grounds invoked to restrict the cultivation do not conflict with the scientific risk assessment conducted by European Food Safety Authority.

The Council has followed the Parliament in introducing appropriate provisions to respect the legitimate expectations of farmers who have already planted GM crops prior to the adoption of national measures. However, it appeared to the Council that since the proposal is concerned exclusively with cultivation rather than placing on the market as such, it was not necessary to amend Article 22 of Directive 2001/18, as suggested by the Parliament. On the contrary, in the Council's view it is important to ensure that restrictive measures regarding cultivation do not inadvertently lead to the trading of authorised GMOs, including propagating material, becoming unlawful.

Moreover, as regards coexistence, a new Recital has been inserted referring to the most recent Commission Recommendation on this field. This Recommendation provides guidance to Member States with a view to avoiding the unintended presence of GMOs in other products on their territory and in border areas.

In view of the fact that authorisation procedures may reasonably be expected to be underway when the proposal is finally adopted, it seemed necessary to introduce appropriate transitional provisions.

Finally, the Council did not consider it appropriate to introduce an obligation to impose a regime of financial liability, particularly due to the lack of information regarding the cost, administrative burden, and other consequences that such a regime could have, including as regards the systems of private law of the Member States.

#### **IV. CONCLUSION**

Whilst the Council is conscious of the fact that it has taken a different approach from the approach taken by the European Parliament, the overall direction of the two institutions is broadly the same. The Council therefore looks forward to constructive discussions with the European Parliament at second reading with a view to the early adoption of the directive.

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