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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory
- Outcome of the European Parliament's first reading
(Strasbourg, 26 to 29 October 2015)

I. INTRODUCTION

The Committee on the Environment, Public Health and Food Safety submitted one amendment to the proposal for a Regulation (amendment 1). The effect of this amendment was to reject the Commission's proposal and to call on the Commission to withdraw it.

Forty or more MEPs then submitted a further amendment (amendment 2), which took on the Committee's amendment 1, but also called on the Commission to submit a new proposal.

In addition:

- the Greens/EFA, EUL/NGL and EFDD political groups submitted one amendment (amendment 3); and
- the ENF political group submitted nine amendments (amendments 4-12).

II. DEBATE

The Rapporteur, Mr Giovanni LA VIA (EPP - IT), opened the debate, which took place on 28 October 2015, and:

- noted the significant public concern regarding the possible effects of GMOs on human health;
- stated that there was to date no scientific proof that the consumption of GMO foods could have an impact on human health and the environment. EFSA had stated its position, but the EU applies the precautionary principle and the Parliament therefore has an open position;
- recalled that the Commission's proposal would allow Member States to adopt national decisions aimed at limiting or banning the use of GMOs in food and feed, once such use has been authorised at the EU level (the so-called "opt-out");
- recalled that the Committee on the Environment, Public Health and Food Safety had voted by a large majority against this proposal, albeit for a variety of different reasons;
- noted that serious concerns had been expressed in recent months regarding the lack of an impact assessment, the compatibility of Member State measures with the single market, and the feasibility of the proposal;
- expressed his concern that the proposal could seriously damage animal food production and the overall agricultural sector of the EU, which is so heavily dependent on the provision of proteins coming from GMOs;
- warned that the proposal could also have an indirect negative impact on imports;
- questioned whether the proposal was actually feasible, given the lack of external border controls in the EU;
- warned that the introduction of internal controls would reverse the development of the single market;
- questioned how Member States applying the "opt-out" would ensure respect of the regulatory regime on their own territory; and
- opposed the amendments submitted to the Committee's report, such as those calling for a new proposal from the Commission or for a moratorium before a new proposal is submitted. He believed that the legislation currently in force is good and that it is up to the Member States to have the courage to implement it.

Commissioner ANDRIUKAITIS:

- stated that the proposal derived directly from the set of political guidelines which formed the basis for the appointment of the current Commission;
- explained that the aim of the proposal is to resolve a paradox; namely that, whilst EU citizens in many Member States seem to be very sceptical about GMOs, it is nonetheless the case that GMOs are authorised in the EU only after a comprehensive risk assessment that confirms a high level of safety;
- noted that EU livestock protein producers are extremely dependent on imports of protein crops, which are mostly genetically modified soya. These GMOs are widely used to feed animals, even in those Member States which are opposed to GMO products;
- stated that EU livestock producers need a legally sound authorisation mechanism;
- recalled that, before the Commission takes a decision on GMO authorisation, it consults Member States, first in a Standing Committee and then, if the Standing Committee does issue a clear opinion, in the Appeal Committee. Member States thus have two opportunities to express their views. Under comitology rules, if Member States reach a qualified majority in favour of a draft Commission authorisation, the Commission adopts it. If Member States reach a qualified majority against the draft, the Commission cannot adopt its draft authorisation. If there is no opinion, the Commission is required to adopt a decision alone. He recalled that, in the specific case of GMOs, Member States have never reached a qualified majority either for or against the draft authorisation proposed by the Commission. The result has been a ‘no opinion’ for the 67 GM food and feed authorisations that have been granted. Most of the Member States who voted against or abstained did not challenge the risk assessment, but instead openly invoked national political reasons. As a result, by failing to reach a qualified majority for or against, Member States leave the final decision solely to the Commission. This is unique because thousands of other decisions are adopted without difficulty under the comitology procedure in other sectors. This creates tensions, deepens a democratic deficit in the EU, and contributes to a climate of distrust towards the EU and its institutions;
- stated that it is time for all actors to assume their full responsibilities. The Commission’s proposal provides a pragmatic and legally sound approach that is consistent with the subsidiarity principle;

- referred to the Directive on GMO cultivation as one that provides a workable framework to allow Member States to respond to their national circumstances. The current proposal applies the same logic;
- stated that the current proposal would assign clear roles to the Commission and to the Member States. The Commission would retain responsibility for granting European marketing authorisations for safe GMOs, while Member States would hold full responsibility for deciding whether or not to allow their use on their own territory;
- stated that he was not aware of an alternative approach that could properly address the problem, whilst at the same time respecting the EU's institutional framework. Changing the Comitology Regulation just for GMOs would raise questions of equality of treatment with respect to other systems of prior authorisation. It might also result in the Commission not being allowed to take a decision either way. Changing the voting rules would also be problematic, because these rules are set out in the Treaty;
- noted the argument that the solution is not to change the authorisation system, but rather to improve GMO risk assessment. In response, he referred to the ongoing efforts of the Commission and EFSA to ensure that GMO risk assessments are based on the very best science and the highest independence;
- stated that he would very much regret any decision by the Parliament to reject the proposal. An open and serious debate would be to the institutions' benefit. It would also bring the EU closer to its citizens and solve the democratic deficit issue;
- stated that the Commission would, in the event of a rejection, continue to apply current legislation. The Member States would still fail to take a clear position, would remain led by national political considerations and, without challenging the EU risk assessment or demonstrating that GMOs are unsafe, would not give a clear vote but instead leave full responsibility for the decision to the Commission alone. Farmers would continue to feed GMOs to their livestock, whether they wished to do so or not, and EU citizens would be sceptical about GMOs in many Member States; and
- argued that the current proposal provided a last chance to give a concrete answer to EU citizens' genuine and legitimate concerns. Confidence in the EU as a whole, as well as just the GMO authorisation system, is at stake.

Speaking on behalf of the Committee on Agriculture and Rural Development, Mr Albert DESS (EPP - DE):

- stated that he could not agree with the Commission's proposal that competence should be left to the Member States;
- warned that national authorisation would also require border controls for imported Member States;
- called for the proposal to be rejected; and
- warned that the proposal would endanger livestock production in the EU.

Speaking on behalf of the EPP political group, Dr Peter LIESE (EPP - DE):

- stated that his political group supported the report of the Committee on the Environment, Public Health and Food Safety and did not want any amendments to it;
- opposed any introduction of new border controls - which is the only way the proposal could be implemented; and
- called for the the proposal to be rejected.

Speaking on behalf of the S&D political group, Mr Guillaume BALAS (S&D - FR):

- noted that there was widespread support for the rejection of the Commission's proposal;
- stated that his political group is opposed to renationalising trade policies;
- urged the Commission to work on a new proposal based on the Commission's work to date as well as on the Parliament's input; and
- stated that total self-sufficiency should not be the aim. It is important to recognise that many consumers do not want to eat animals that have been raised on GMO feed.

Speaking on behalf of the ECR political group, Mr Zbigniew KUŹMIUK (ECR - PL) called for the application of the same approach as that used for the GMO cultivation legislation, which was democratically adopted.

Speaking on behalf of the ALDE political group, Mrs Gesine MEISSNER (ALDE - DE):

- recognised the difficulty of the challenge facing the Commission;
- recalled the impossibility of getting a majority at the committee level, which places the Commission in a difficult position;
- stated the Commission's proposal does not provide a solution; and
- called on the Commission to come forward with a new proposal that would not require border controls.

Speaking on behalf of the EUL/NGL political group, Mrs Lynn BOYLAN (EUL/NGL - IE):

- recalled the Commission's commitment to address the democratic deficit in this policy area, but stated that the current proposal would not keep this commitment;
- called for the rejection of this inadequate proposal, but also for the Commission to be required to submit a new proposal;
- noted that nineteen Member States had opted out of GM cultivation;
- regretted the current proposal's failure to reform the authorisation procedure and EFSA's risk assessment procedure;
- recalled the Parliament's resolution on GM product 1507, calling for a freeze on any new authorisations until the risk assessment procedure had been reformed; and
- stated that the current proposal contains numerous loopholes.

Speaking on behalf of the Greens/EFA political group, Mr Bart STAES (Greens/EFA - BE):

- asked how one could prevent a lorry arriving in Antwerp from conveying GMO feed into a Member State where it is banned; and
- stated that there are twelve available options and called for the Commission to withdraw the proposal so that it can review these options and return with an appropriate proposal.

Speaking on behalf of the EFDD political group, Mrs Eleonora EVI (EFDD - IT):

- noted that the Commission's proposal does not provide for an impact assessment;
- regretted the lack of political will to find a proper answer; and
- suggested that one solution might be to return risk management to the Member States and that another might be to amend the comitology rules.

Mrs Françoise GROSSETÊTE (EPP - FR):

- stated that the Commission was trying to shift responsibility onto the Member States;
- warned that the proposal would introduce legal uncertainty;
- called for a calm debate based on science rather than on emotion;
- called for common rules, rather than renationalisation; and
- called on the Commission to withdraw its proposal and to return with a new proposal.

Mr Carlos ZORRINHO (S&D - PT) called for a European rather than a national approach.

Mr Richard ASHWORTH (ECR - UK) stressed the need for an approach based on science and the single-market. Arguing that the Commission's proposal did not adopt such an approach, he supported the Rapporteur's call to reject the proposal.

Mr José BOVÉ (Greens/EFA - FR):

- argued that a simple majority should be sufficient to reject GMOs at the European level; and
- called for a moratorium on any new authorisations or re-authorisations, pending the submission of a new proposal by the Commission.

Mrs Julia REID (EFDD - UK):

- stated that each Member State should be able to decide whether or not to opt out. In particular, each Member State should have the right to ban a product if its representatives believe that the product could be a danger to human and animal health or to the environment; and
- argued that a prior decision by EFSA is not sufficient, because of the inexcusable lack of transparency, the impossibility of accessing data for independent research and the dubious test method used for GMOs and feed. In short, the prior risk assessment method used by EFSA is too short and risky.

Commissioner ANDRIUKAITIS once more took the floor and:

- rejected as incorrect the claims that the Commission's proposal was not in line with the rules of the single market. Under the Treaties, Member States may have a derogation from the freedom of movement rule on the basis of overriding reasons related to the public interest;

- stated that it is meaningless for the Commission to carry out an ex-ante impact assessment on a proposal which merely gives the Member States a legal basis on which to act. The current proposal would not have an impact in itself; it would be up to the Member States to evaluate the possible impact of their own decisions;
- regretted the many voices calling for the rejection of the Commission's proposal, because it would be preferable to continue discussions using the codecision procedure rather than seeking to bring the conversation to a close;
- stated that EFSA's risk assessment of GM food and feed is in accordance with the highest and the most up-to-date scientific standards; and
- reaffirmed the Commission's belief that the present proposal was the right way to address the challenges in question. The Commission would therefore not withdraw its proposal.

The Rapporteur once more took the floor and stressed the need for the Commission to carry out an impact assessment on the effect that a patchwork of different national regulatory regimes would have on the single market.

III. VOTE

When it voted in plenary on 28 October 2015, the Parliament adopted amendments 1 and 2. No other amendments were adopted.

The text of the Parliament's position and the European Parliament's legislative resolution are annexed to this note.

Use of genetically modified food and feed *I**

European Parliament legislative resolution of 28 October 2015 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory (COM(2015)0177 – C8-0107/2015 – 2015/0093(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0177),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0107/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Belgian Chamber of Representatives, the Spanish Parliament, the Netherlands House of Representatives and the Austrian Federal Council, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 16 September 2015¹,
 - having regard to the opinion of the Committee of Regions of 13 October 2015²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Agriculture and Rural Development (A8-0305/2015),
1. Rejects the Commission proposal;
 2. Calls on the Commission to withdraw its proposal and submit a new one;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.