

Genetically Modified Organisms – A Way Forward

Note submitted by the Delegations of Austria, Bulgaria, Cyprus, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands and Slovenia for Discussion at the Environment Council on 25 June 2009

Background

The authorisation of GMOs is a rare subject under EU legislation where in recent years no qualified majority has been achieved. In accordance with Council Decision 1999/468/EC on comitology and in the absence of a qualified majority, the European Commission has preponderantly adopted decisions for authorisation of GMO's. At four occasions, a qualified majority in Council voted against EC proposals to lift the safeguard clauses which were invoked with regard to certain GMOs by several Member States: in June 2005, in December 2006, in February 2007 and most recently in March 2009. These safeguard clauses concerned in particular GMOs approved for cultivation.

The French EU-presidency showed great initiative by establishing the *ad hoc*-Council working group on GMOs in the second half of 2008, which resulted in unanimous Council Conclusions on 4 December 2008. These Council Conclusions called *inter alia* for strengthening the environmental risk assessment, more freedom to Member States in deciding upon GMO-free zones on their national territory and the appraisal of socio-economic benefits and risks.

The Dutch delegation came up with a declaration at the last Environment Council on 2 March 2009 to call for Member States' rights for self-determination on the cultivation of GMOs. The delegations cited above appreciate this initiative and are willing to develop it further in order to find a long-term satisfactory solution.

The Way Forward

Given the unsatisfactory situation and the negative attitude towards GMOs of large parts of the population in many Member States, time has come to find a new approach to deal with the authorisation and use of GMOs in agriculture.

In addition to reasons for the protection of nature and biodiversity, the delegations supporting this initiative are of the opinion that relevant socio-economic aspects could form a basis for individual Member States to prohibit or regulate the cultivation of GMOs on the whole territory or certain, defined areas of individual Member States. However, a methodology to define and evaluate socio-economic criteria is currently not available. Such criteria could be discussed and agreed upon during the process on socio-economic aspects that started with the adoption of the council conclusions of 2008.

In anticipation of the development of socio-economic criteria, we believe that options should be considered which could enable national self determination for cultivation, without changing the general authorisation procedure for placing GMOs and products there of on the market. In this context it should be noted that the Commission has started a process to re-evaluate the respective Regulations on GMOs, e.g. Directive 2001/18/EC and Regulation (EC) 1829/2003.

The legally soundest solution we envisage is a set of minor amendments of relevant EU legislation, which should introduce the right of an individual Member State to restrict or prohibit indefinitely the cultivation of authorised GMOs on its territory. The amendments could be based on the subsidiarity principle (Article 5 TEC) and the principle of unanimity for decisions on land use (Article 175 TEC). Such an “opt-out”-clause could be formulated rather straight forward in legal terms and could easily be integrated in the existing legislation.

The Member States supporting this initiative urge the Commission to put forward a proposal on the basis of this discussion on GMOs and possible additional options,

with the common goal to find a solution acceptable to all Member States as soon as possible.

All Member States supporting this note are willing to discuss any further options and proposals which might arise.