European Economic and Social Committee

NAT/669
New provisions on GMOs and GM food and feed (rolling programme)

Brussels, 16 September 2015

OPINION

of the
European Economic and Social Committee
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 Member States to restrict or prohibit the use of genetically modified food and feed on their territory
(rolling programme)
COM(2015) 177 final – 2015/0093 (COD)

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On 30 April 2015 and 17 June 2015 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 114 and 304 of the Treaty on the Functioning of the European Union, on the

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The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 September 2015.

At its 510th plenary session held on 16 and 17 September 2015 (meeting of 16 September), the European Economic and Social Committee adopted the following opinion by 138 votes to 6 with 7 abstentions.

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1. Conclusions and recommendations

1.1 The EESC welcomes the European Commission's plans to address an issue that has sparked considerable interest among the production sectors and public opinion in general.

1.2 The EESC welcomes the fact that the Commission is taking action on its mandate to find solutions to an approval system for GMO crops which has proved inadequate in practice.

1.3 The EESC regrets that the proposal does not give enough attention to key aspects such as traceability and legislative consistency between the food and feed sectors, or provide a socio-economic impact study of the proposals.

1.4 The EESC also has reservations about the real possibility of implementing these rules in the single market and about certain legal aspects; this is not to mention the political problems and problems of public perception that run alongside these legal questions.

1.5 The EESC therefore advises the Commission to withdraw the proposal, as currently worded, and to draw up an improved proposal that addresses the shortcomings pointed out in this opinion and in other similar recommendations made by the European Parliament.

2. Background

2.1 Biotech crops (genetically modified organisms or GMOs) began to spread throughout the world in 1996. Since then, the area covered by this type of crops has steadily increased at an annual rate of 3-4%. Between 2013 and 2014 the area covered by biotech crops increased by 6.3 million hectares to comprise a total of 181 million hectares, cultivated by more than 18 million farmers in 28 countries. The largest cultivated areas are in the USA, Brazil and Argentina; there are also large areas in developing countries such as Burkina Faso, Sudan and Bangladesh. The main crops are maize, soya and cotton, although there are others such as aubergines, tomatoes and peppers.

2.2 GM crops are grown in five countries within the European Union (Portugal, Czech Republic, Romania, Slovakia and Spain), with a total coverage of approximately 148 000 hectares (including 137 000 hectares in Spain, 8 000 hectares in Portugal, 2 500 hectares in the Czech Republic, 800 hectares in Romania and 100 hectares in Slovakia (2013 data[1]).

2.3 Food and feed product labelling has, for over a decade, been legally required to disclose the presence of GMOs as a matter of course. At present, 85% to 90% of industrial feed produced in the EU are labelled as GMO or containing GMO, as such feed contains a significant quantity of raw materials of GMO origin, both imported and produced in the EU. These represent on average 20-25% of the total composition of industrial feed. If this proposal comes into effect, it may affect demand and supply for food and feed in the EU seriously. The effect this may have on European agriculture and subsequently on the CAP has to be assessed thoroughly. The EU rules to ensure reliable GMO traceability in food and animal feed should be extended to also label these products as non-GMO when they truly are GMO-free.

2.4 However, the EESC regrets and emphasises that similar efforts have not been made in EU legislation on traceability for food.

3. Existing regulatory framework

3.1 Since the entry into force of Regulation (EC) No 1829/2003[2], there has never been a qualified majority among Member States in the Council in favour of or against a draft Commission decision authorising GMOs and genetically modified food and feed. The outcome has been a permanent "no opinion" at all administrative stages of the procedure. As a result, authorisation decisions have been adopted by the Commission, in accordance with applicable legislation, but without Member States' backing.

1 http://ec.europa.eu/food/plant/docs/plant_gmo_report_studies_report_2013_mon_810_en.pdf

2 OJ L 268, 18.10.2003, pp. 1-23.

3.2 The return of the file to the Commission for final decision has become standard practice, although it should be very much the exception.

3.3 In the absence of a qualified majority among Member States, the Commission, as risk manager, must take a decision (to grant or refuse authorisation) within a reasonable period of time.

4. Commission proposal

4.1 The Commission's proposal is to insert a new Article 34a into Regulation (EC) No 1829/2003. According to this Article, Member States may adopt measures to restrict or prohibit the use of GMOs provided that such measures are:

- reasoned and based on compelling grounds in accordance with Union law which shall, in no case, conflict with the risk assessment carried out, and
- proportional and non-discriminatory.

4.2 Where a Member State intends to adopt measures under the new rules, it shall submit the draft of those measures, and the corresponding justification, to the Commission.

4.3 The measures adopted shall not affect the use of food and feed containing an adventitious or technically unavoidable presence.

4.4 These measures shall not apply to GMOs for cultivation.

4.4.1 However, a similar procedure has already recently been adopted with Directive (EU) 2015/412, thereby allowing Member States more freedom to decide to restrict or prohibit the cultivation of GMOs in their territory[3]. The present Commission proposal now seeks to create a similar procedure for GMO food and feed products, consistent with the solution recently agreed for GMO cultivation.

5. Initial remarks

5.1 GMOs are a thorny issue and they provoke intense passions, both positive and negative. This EESC opinion will thus be strictly limited to the pros and cons of the proposal and will not produce a more general evaluation of whether GMOs are inherently "good" or "bad" as has been previously done by the Committee[4].

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3 OJ L 68, 13.3.2015, pp. 1-8.

4 OJ C 68, 6.3.2012, pp. 56-64.

6. **Arguments in favour of the Commission proposal**

6.1 Restoring the balance between national and EU competences

6.1.1 It is well known that due to the current common agricultural policy's operational and budgetary constraints, many countries are now questioning the competences conferred by the Treaties in this area, causing political damage to the European institutions.

6.1.2 Furthermore, some Member States that are not "natural" beneficiaries of the CAP often criticise the budgetary importance attached to this common policy and to other common policies under the third pillar. This political opposition is finding increasing support in certain Member States, a fact which cannot be ignored by legislators or the EESC.

6.1.3 In practice, the Commission proposal would hand back powers, satisfying the demands of some Member States (and public opinion in those countries) to restore the balance between national and EU competences, especially in an area where Member States still have powers (with respect to GMO crops).

6.2 The proposal's inclusion of legal precautions and safeguard clauses to prevent misuse by Member States

6.2.1 The requirement that measures taken by Member States must be justified on a case-by-case basis means that these measures cannot be arbitrary and must also be compatible with the Treaties and, in particular and expressly, with the principles of the internal market and the Union's international obligations.

6.2.2 These precautions, together with the principle that government should be accountable, a key element of modern national governments, should ensure that exclusion decisions are exceptional and proportional.

6.3 Removing an anomaly in the EU's legal practices

6.3.1 As the Commission states when providing the background to the proposal, the provisions of Regulation (EC) No 1829/2003 have never been completely fulfilled, as much due to national positions that are not based on science as due to the legal anomaly of the Commission making decisions directly (comitology).

6.3.2 This situation – truly exceptional in the context of the European regulatory system – would be limited if the proposal as presented by the Commission were to be adopted. Those Member States that have hitherto been determined that no decisions should be taken, or have been systematically opposed to sufficient majorities being formed, might no longer deem it necessary to mount political opposition within the Council if they can use other tools at

national level to counteract or void the Council's decisions on this subject within their borders.

6.4 Fulfilling its mandate

6.4.1 By drafting the proposal amending Regulation (EC) No 1829/2003, the Commission is fulfilling the mandate it was given to submit a proposal that overcomes the limitations of the existing regulatory framework for authorising GM feed and food. The Commission's proposal is therefore necessary and timely.

7. Arguments against the Commission proposal

7.1 Universal opposition from all the sectors concerned

7.1.1 The Commission proposal has met with widespread opposition, subsequently echoed by the media, both from sectors that have been in favour of using GMOs in food and feed and from all those who have usually argued against the use of GMOs. Significantly, it is worth noting the Committee on the Environment, Public Health and Food Safety of the European Parliament's public criticism of the proposal, on which basis its withdrawal has been recommended; a formal vote will take place in October[5].

7.1.2 The strong reservations expressed by these sectors, albeit the expression of different and even conflicting visions, will inevitably lead to a difficult parliamentary debate with an uncertain outcome that it may be wise to avoid by submitting the proposal to a more carefully thought-out review.

7.2 Risk of lack of transparency in national decision-making

7.2.1 The Commission maintains a common system of risk assessment relating to GMOs, set out in Directive (EU) 2015/412[6]. However, the possibility granted to Member States to use national reasons as a way of restricting risk assessments and Community authorisations (and the lack of a mandatory and transparent system of public information regarding the reasons and justifications that lead Member States to pursue exclusion clauses) may seriously compromise pledges to make public decision-making transparent that were established and publicised as a priority in the Juncker Commission's policy guidelines. It would therefore be wise to demand that the regulation establish such national public information systems and ensure they are transparent and publicly accessible.

5 http://www.europarl.europa.eu/meetdocs/2014_2019/documents/envi/pr/1065/1065989/1065989en.pdf

6 OJ L 68, 13.3.2015, pp. 1-8.

7.3 Risk of unpredictability

7.3.1 If the Commission proposal were adopted in its current form, the result might be an anomalous situation whereby Europe-wide public decisions taken according to scientific criteria may have different legal and economic implications for different Member States. This fact may undermine the predictability and credibility of EU decision-making.

7.3.2 There is no socio-economic impact assessment of the proposal, with a detailed description of the impact on costs for the food chain, cultivation, the supply of raw materials or any market distortions.

7.3.3 There is no mention of measures for ensuring GMO traceability in the labelling of food intended for human consumption.

7.4 Risk of international trade distortions

7.4.1 Although the Commission proposal requires compliance with the EU's international obligations, the regulations do not set out specific and definite limits to Member States' actions (opt-outs) that may contravene those obligations and do not establish mechanisms to enable EU institutions to overturn national decisions if they fail to observe the principle of compliance with international obligations. It is important to note that the Union's trading partners, in particular the US, have publicly expressed their reservations regarding the legislative proposal, and have even made the adoption of high-level trade talks (TTIP) subject to overcoming these reservations.

7.4.2 International agreements that are potentially affected or restricted by the possible implementation of the proposal (as it may create distortions equivalent to international trade barriers) contain generic WTO obligations or provisions such as the Generalised System of Preferences (GSP) for developing countries and even the Everything but Arms initiative.

7.5 Doubts about compliance with the principles of free movement

7.5.1 The Commission proposal refers to the need to uphold the principles of the internal market, which should not be changed by national measures taken in accordance with this proposal, especially since it is likely that in practice different EU regions would apply different provisions to cultivation, marketing and transport within the EU.

7.5.2 However, the lack of an exhaustive definition of the reasons that might justify the adoption of exclusion clauses – the absence of a positive or a negative list – as well as the lack of provision of legal mechanisms to suspend national measures that could be considered unfair, not sufficiently justified, or discriminatory, makes legal uncertainty a real risk.

7.5.3 Only the Court of Justice of the European Union will be able to resolve these uncertainties, unnecessarily tying up Member States' administrative work in legal battles and potentially causing delays and higher costs.

7.5.4 It is this last argument that raises the most doubts regarding the timeliness and appropriateness of the Commission proposal in its current form.

Brussels, 16 September 2015

The President
of the
European Economic and Social Committee

Henri Malosse