

# Genetically modified organisms (GMOs): possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory

2010/0208(COD) - 23/07/2014 - Council position

The Council adopted its common position 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.

The Council followed the general direction of Parliament's amendments in certain key respects (e.g. the introduction of specific grounds on which to base national restrictions). However, in most other respects the Council has preferred **a different approach**.

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

- the Council's position is based on **Article 114 TFEU**, not Article 192 TFEU. 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 ;
- although the proposal was initially made in the form of a regulation, the Council changed the legal form to that of **a directive**, albeit one without a transposition period given the optional nature of the provisions in question ;
- 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). The new provisions relate 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. The grounds invoked to restrict the cultivation should 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, the Council considered that it was not necessary to amend Article 22 of Directive 2001/18, as suggested by the Parliament. On the contrary, 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 ;

- 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.

Lastly, the Council did not consider it appropriate to introduce an obligation to impose a regime of financial liability.