Member States' bans on GMO cultivation

Parliament and Council reached a trilogue agreement at second reading in December 2014 on legislation proposed by the Commission in 2010, granting Member States more freedom to decide over cultivation of genetically modified organisms on their territory.

Background

Genetically modified organisms (GMOs) are organisms whose genetic material has been modified artificially in order to give them new properties, such as resistance to droughts or insects. GMOs may be plants, animals or micro-organisms, such as bacteria, parasites and fungi. The cultivation of GM plants is controversial, with public opinion in the EU remaining sceptical towards them. Those in favour of their use see genetic modification as a means to improve the qualities of plants and increase productivity, whereas opponents are wary of genetically modified plants proliferating uncontrolled in the environment, making farmers dependent on biotech companies, and threatening human health, although research has to date failed to confirm the latter claim.

In place since a decade ago, the EU regulatory framework concerning GMOs consists of three legislative acts: Regulation (EC) No 1829/2003 on genetically modified food and feed, Regulation (EC) No 1830/2003 on traceability and labeling of GMOs, and Directive 2001/18/EC on the deliberate release into the environment of GMOs. Cultivation of GMOs requires authorisation through a centralised EU system, based on a scientific safety assessment by the European Food Safety Authority (EFSA). However, due to Member States' divisions over GMO cultivation, approvals tend to be blocked in Council, with a qualified majority neither for nor against approval. Currently the only GMO cultivated in the EU is insect-resistant maize, MON810, from Monsanto, grown in five Member States (Czech Republic, Portugal, Romania, Slovakia and Spain).

After authorisation, individual Member States can only restrict the cultivation of a GMO on their territory by using the so-called safeguard clause (Article 23 of Directive 2001/18/EC) or applying emergency measures (Article 34 of Regulation (EC) No 1829/2003). Restrictions are intended to be temporary and must be justified by new scientific information indicating that the GMO poses a risk to human health or the environment. Eight Member States (Austria, Bulgaria, Germany, Greece, Hungary, Italy, Luxembourg and Poland) have adopted safeguard measures prohibiting the cultivation of MON810 on their territories. France also had a cultivation ban in place until August 2013, when it was annulled by the *Conseil d'Etat* (the highest administrative court in France), following a 2011 ruling of the Court of Justice of the EU.

EFSA gives scientific opinions on the new information presented by Member States to justify their bans. Up to now, EFSA has judged all safeguard clauses to be scientifically unfounded. Despite this, the Council has rejected the Commission's proposals to lift national safeguard clauses.

Commission proposal

Following a demand from several Member States for more flexibility on decisions over cultivation, the Commission submitted a legislative proposal in July 2010, introducing a new article in Directive 2001/18/EC that would allow Member States to restrict or prohibit the cultivation of all, or individual, authorised GMOs in part or all of their territory, on grounds other than those covered by the environmental risk assessment under the EU authorisation system. This could help to end the deadlock concerning approvals of new GMOs, as Member States might be more willing to approve them when they can still ban them in their territory.

European Parliament

In July 2011, Parliament adopted its first reading position (rapporteur: Corinne Lepage, ALDE, France). Parliament considered that the legal basis of the proposal should be changed to Article 192(1) (environment)

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PE 545.708

of the Treaty on the Functioning of the European Union (TFEU) instead of Article 114 (internal market), as this would give a firmer basis against legal challenges posed by biotech companies or the World Trade Organisation (WTO). The EP wanted to broaden the list of reasons which Member States could invoke as justification for their bans to include environmental grounds (protection of biodiversity, habitats and ecosystems), socio-economic impacts (e.g. impossibility of co-existence measures due to specific geographical conditions such as small islands, risk of contamination for organic and conventional farmers), as well as other grounds such as land use or town and country planning. Parliament demanded that Member States establish a mandatory system of financial liability, ensuring that the polluter pays for damages, if, for example, conventional or organic crops are contaminated. Parliament also insisted that Member States prevent cross-border contamination by setting up buffer zones with neighboring countries.

Council position

In July 2014, Council adopted its common position. Council agreed with Parliament on establishing a non-exhaustive list of grounds on which national restrictions could be based. The text should remain based on Article 114 TFEU (internal market), as in the Council's view the main purpose of the proposal is to ensure the smooth functioning of the internal market. Although the proposal was initially for a Regulation, Council changed the legal form to a Directive. Council distinguished two separate phases in the process: in the first phase, during the GMO authorisation procedure, a Member State could request the applicant company to adjust the geographical scope of the authorisation, excluding part or all of its territory from cultivation. In the second phase, after the authorisation procedure was completed, Member States could still prohibit cultivation, provided that the national measure does not conflict with the environmental risk assessment carried out at EU level. The Council did not want to include a system for financial liability.

Agreement in trilogue

On 11 November 2014, the EP's Environment Committee voted on its recommendation for second reading (rapporteur: Frédérique Ries, ALDE, Belgium), setting Parliament's position for negotiations. Following that, Parliament and Council reached provisional agreement on 3 December 2014. Member States would only be allowed to ban GMOs on the basis of environmental policy objectives which do not conflict with the environmental risk assessment conducted by EFSA. In addition, Member States will be able to invoke agricultural policy objectives or other compelling grounds, such as land use, socio-economic impacts, coexistence and public policy. In addition to individual crops, Member States would also be able to prohibit groups of GMOs. The legal basis of the Directive will remain Article 114 TFEU (internal market). Parliament's request to establish a liability regime in case of damage was not retained. As to co-existence, Member States in which GM crops are cultivated will have to avoid cross-border contamination by establishing buffer zones along their borders with Member States in which GMOs are not grown.

Coreper endorsed the agreement on 10 December and the EP's Environment Committee on 17 December 2014, allowing a vote in plenary to confirm the agreed text.

Reactions to the agreement

Health and Food Safety Commissioner Vytenis Andriukaitis, who was present in the negotiations, welcomed the agreement, stating that it 'will give Member States the possibility to restrict or prohibit the cultivation of GMOs on their territory, without affecting the EU risk assessment'. In line with the political guidelines of Commission President Jean-Claude Juncker, the aim is 'to give the democratically elected governments at least the same weight as scientific advice when it comes to important decisions concerning food and environment'. Nonetheless, a review of the system remains in the Commission's 2015 work programme.

The European Association for Bioindustries, EuropaBio, expressed disappointment, describing the agreement as a 'non-cultivation agreement' which would enable Member States to reject safe products approved at EU level. Reacting to the original proposal, European farmers and cooperatives group COPA-COGECA had expressed concerns that the approach 'sets a dangerous legal precedent, jeopardising the internal market for approved products and increasing distortions of competition amongst EU farmers'. COPA-COGEGA feared that farmers may face arbitrary, non-scientific decisions from their competent national authorities.

Greenpeace EU and the organic food and farming movement IFOAM regretted the outcome, deploring that the agreement would not allow countries to use grounds related to the environmental impact of GMOs to justify national bans, leaving them exposed to legal action from the biotech industry.