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Committee on Legal Affairs

29.6.2015

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Spanish Parliament 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))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Spanish Parliament has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

REASONED OPINION 1/2015 OF THE JOINT COMMITTEE ON EUROPEAN AFFAIRS, OF 16 JUNE 2015, ON A BREACH OF THE SUBSIDIARITY PRINCIPLE IN RELATION TO 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) 177 FINAL) (2015/0093 (COD))

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Lisbon Treaty of 2007 and in force since 1 December 2009, provides for a procedure by which national parliaments can monitor the compliance of EU legislative proposals with the principle of subsidiarity. This Protocol has been applied in Spain by means of Law 24/2009 of 22 December 1994 amending Law 8/1994 of 19 May 1994. New Articles 3(j), 5 and 6 in particular of Law 8/1994 form the legal basis for this reasoned opinion.

B. 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 has been approved by the Commission and forwarded to the national parliaments, which have a period of eight weeks to determine whether the initiative is in compliance with the principle of subsidiarity. This period terminates on 23 June 2015.

C. On 20 May 2015, the Bureau and the spokespersons of the Joint Committee on European Affairs agreed to examine the above European legislative proposal. Senator Ángel Pintado Barbanoj was appointed rapporteur and the government was asked to draft the report provided for in Article 3(j) of Law 8/1994.

D. The government's report was duly submitted. That report states that the proposed amendment of the regulation under review affects the correct application of the principle of subsidiarity, since responsibility is transferred to an administration that does not have sufficient capacity to achieve the objectives of the proposed action, which means that it is in breach of the principle of subsidiarity.

E. At its meeting of 16 June 2015, the Joint Committee on European Affairs approved this

REASONED OPINION

1. - Article 5(1) of the Treaty on European Union (TEU) states that 'the use of Union competences is governed by the principles of subsidiarity and proportionality'.
Article 5(3) TEU says that 'under the principle of subsidiarity, (...) the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'.

2. - The legislative proposal under review is based on Article 114 of the Treaty on the

Functioning of the European Union, which reads as follows:

‘1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been

the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.

9. By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.'

3. - The European Union has in place a comprehensive legal framework for the authorisation, traceability and labelling of GM food and feed. Regulation (EC) No 1829/2003 on GM food and feed covers food, food ingredients, and feed containing, consisting of or produced from GMOs. It also covers GMOs for other uses such as cultivation, if they are to be used as source material for the production of food and feed. These different products are designated in this document as 'GMOs and GM food and feed'.

Regulation (EC) No 1829/2003 has put in place an authorisation procedure whose aim is to ensure that the placing on the market of the products concerned will not pose a risk to human and animal health and the environment. In order to do so, a scientific risk assessment is at the centre of the procedure: every authorisation for placing on the market of a product has to be duly justified and the main ground on which such a justification can rely is scientific assessment. The legislation gives responsibility for this scientific risk assessment to the European Food Safety Authority (EFSA), in cooperation with the scientific bodies of the Member States.

Regulation (EC) No 1829/2003 contains provisions allowing the Commission or Member States to adopt emergency measures against the placing on the market/use of an authorised GMO, where it appears that the product is likely to constitute a serious risk to health or to the environment. These measures require scientific evidence demonstrating that the product is likely to pose a serious risk to health or to the environment.

4. - The proposed reform of Regulation 1823/2003 on possible restrictions or prohibitions on the use of products containing genetically modified organisms generates a degree of confusion with regard to the objectives being pursued by the Commission, since they are not adequately explained. We are aware of the difficulties that the Commission faces in defining a unanimous policy that will receive the backing of all the Member States. However, we believe that this should not be seen as an obstacle preventing an attempt to maintain a balanced position that will provide guarantees for consumers, producers of raw materials and feed, livestock farmers and the meat industry. This proposal for an amendment to the regulation gives rise to legal insecurity, unforeseen costs and a breakdown in the single market. A system based on scientific guarantees is being replaced by a system that may be swayed by political or ideological interests and positions. Our dependence on raw materials (cereals, oilseed crops and protein crops) is significant enough to warrant action to safeguard the future of this production sector.

The European Union is the world's largest importer of agricultural products. On average, the

EU food industry uses 225 million tonnes of raw material for feed every year. Europe is heavily dependent on genetically modified sources of protein for its animal production. In order to be self-sufficient, the European Union would need a soybean-cultivated area of 15.5 million hectares. We currently have 0.6 million.

After 19 years of growing genetically modified organisms, 18 million farmers are currently cultivating 181 million hectares with genetically modified organisms in 28 different countries, chiefly the United States, Brazil, Canada, Argentina and India.

The competitiveness of Europe's agricultural production clearly depends on maintaining the sources of supply, providing guarantees and certainty regarding the rules laid down by the EU and its Member States. Constant changes of direction when it comes to decision-making by the European authorities have the opposite effect to that intended: they cause confusion among consumers, uncertainties among producers and economic damage affecting research, development and innovation in a key sector of our economy.

The European Food Safety Authority is responsible for determining risk assessment, on a scientific basis. At the same time, even though Regulation (EC) No 1829/2003 allows it to take account of 'other legitimate factors' in addition to the risk assessment, the Commission has not in fact been in a position to cite any such factors to justify its refusal to authorise products that are considered safe by EFSA, and in any event it could only do so for the EU as a whole. This argument leads us to take the view that the situation poses a risk to market unity in the EU and could affect the free trade in and movement of goods. The failure to provide a comprehensive statement of the reasons justifying the use of opt-outs (lack of a positive or negative list), and the failure to provide legal mechanisms for the suspension of national measures that can be considered abusive, not sufficiently justified or discriminatory, poses a clear risk of legal uncertainty.

At the same time, it means that animal products from animals fed with genetically modified feed do not need to be labelled as such: re-nationalising GM authorisation may give rise to this type of 'national' labelling request in order to protect farmers from Member States that have decided to ban the use of feed manufactured using GMO products. Such a measure could represent an import barrier for animal products from Member States that have not decided to impose such a ban.

Banning the 'use' of GM products could be extended by some Member States to cover operations such as 'transit, storage or processing' through or on their territory.

There would also be a risk of multiple labelling or increasingly complex analysis if each EU Member State were to impose specific national requirements; this would exacerbate the lack of consumer trust in foreign products, thereby creating a dual market based on non-standardised criteria in the Member States.

This could seriously undermine the concept of an open market and free movement of goods in the EU laid down in Articles 34 and 36 TFEU. In our view, decision-making should always be based on science.

5. - In assessing the legislative proposal's compatibility with the principle of subsidiarity, it should be borne in mind that this field, i.e. regulating the use of genetically modified food and feed, recently underwent significant changes through Directive (EU) 2015/412 of the

European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for Member States to restrict or prohibit the cultivation of genetically modified organisms (GMO) in their territory. The proposal under review again changes the legal framework through which the Member States may adopt measures restricting or prohibiting the use of certain genetically modified products. This change comes only a matter of months after the previous reform of the rules governing the sector. Before turning to the substance of the proposal, it should be pointed out that the legal insecurity generated by successive changes in the rules is in itself an indication of failure to comply with the principle of subsidiarity, since whatever objective the Commission is intending to pursue, it is evident that that objective could have been reached through a more stable legal framework.

Furthermore, it should be pointed out that the proposal under review jeopardises compatibility with the principle of subsidiarity by transferring responsibility for deciding to restrict or prohibit the use of GMOs to individual countries, since those countries do not always have the capacity to take these decisions in such a way as to avoid disrupting the functioning of the internal market. The potential imbalances that may arise in Member States' legislation pose a threat to the functioning of the food and feed market in the European Union, and there is therefore a risk that the proposal may have the opposite effect to that sought by the Commission.

CONCLUSION

For the reasons set out above, the Joint Committee on European Affairs believes that 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 is incompatible with the principle of subsidiarity established in the Treaty on European Union currently in force.

This reasoned opinion will be forwarded to the European Parliament, the Council and the European Commission, within the framework of political dialogue between the national parliaments and the institutions of the European Union.