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From: Presidency
To: COREPER/COUNCIL

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Subject: Proposal for a Regulation 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 GMOs in their territory
- Progress report

1. The Commission submitted the above-mentioned proposal to the European Parliament and the Council on 14 July 2010.

The aim of the proposal is to provide for a legal basis in the related EU legal framework in order to authorise Member States to restrict or prohibit the cultivation, in all or part of their territory, of Genetically Modified Organisms (GMOs) that have been authorised at EU level.

2. Discussions on the said proposal were held within the Council and its preparatory bodies during the BE, HU, PL and DK Presidencies.

At its meeting on 31 May 2012, the COREPER noted that the Presidency continued to consider the possibility to achieve a Political Agreement on this file, as the debate held at the "Environment" Council on 9 March 2012 showed that a blocking minority of delegations opposed to a Presidency compromise proposal.¹

At its meeting on 5 June 2012, the COREPER recognised that such an agreement was not possible to reach at this stage, taking into account that no change in delegations' positions had occurred since the last Council. Consequently, it unanimously accepted the Presidency's suggestion that a Progress Report should be forwarded to the next Council (Environment) on 11 June 2012, under an "A" Agenda Item.

3. The COREPER/Council are therefore invited to take note of the said Report which was prepared by the Presidency, as set out in the Annex.

¹ Document 7153/12.

PROGRESS REPORT

I. INTRODUCTION

The Council Conclusions of 4 December 2008 identified particular areas for improvement of the implementation of the comprehensive EU legal framework for the authorisation of Genetically Modified Organisms (GMOs) entailing work by the Commission and the European Food Safety Authority (EFSA) as well as from Member States. The following areas were identified: the strengthening of environmental assessment and of monitoring arrangements; the appraisal of socio-economic benefits and risks; the better use of expertise; the European labelling thresholds for seeds; the sensitive and/or protected areas.

In June 2009 the "Environment" Council held an exchange of views on the question of cultivation of GMOs in the EU. By then 13 delegations urged the Commission to put forward proposals aimed at allowing individual Member States to adopt national measures to authorise or prohibit the cultivation of GMOs in certain sensitive areas.

On 13 July 2010 the Commission proposed a new "GMO-package" aiming to confer on Member States the freedom to restrict or ban the cultivation of GMOs on part or all of their territory, while keeping unchanged the existing EU science-based authorisation system. The said package consists of a Communication and a draft Regulation proposing a change to Directive 2001/18/EC to allow Member States to restrict or prohibit GMO cultivation on their territory. As part of the same package, the Commission published a Recommendation on co-existence that allows more flexibility to Member States to take into account their local, regional and national conditions when adopting co-existence measures.

According to the original proposal from the Commission, Directive 2001/18/EC would be amended to include a new Article (26b), allowing Member States to restrict or prohibit the cultivation in all or part of their territory of a GMO or GMOs authorised at European level under the provisions of the EU legislation currently in force. The restricting or prohibiting measures must be based on grounds other than those related to the adverse effect on health and environment, and must be in conformity with the Treaties.

In 2010 the Coreper decided to establish an ad-hoc Working Party, in order to allow an integrated examination of the proposed package on GMOs, taking into account the specificity of the topic as well as its agricultural, environmental, economic and legal aspects.

Discussions on the Commissions proposal were held within the Council and its preparatory bodies during the BE, HU and PL Presidencies. The outcome of these discussions showed that although a significant number of delegations broadly support this legislative initiative, a blocking minority of delegations could not accept the proposal.

The Hungarian Presidency submitted a proposal (document 10532/11) to the COREPER meeting on 25 May 2011 with a view to achieve a compromise solution. That proposal did not receive the support of a qualified majority of Member States. Member States opinions was that at this stage more time was needed to refine the proposal taking into account the remaining questions by several delegations, before engaging in discussions with the European Parliament.

The Polish Presidency submitted a Presidency Note (17634/11) to the Council (Environment) on the 1 December 2011.

The Danish Presidency held four ad-hoc Working Party meetings with the aim to reach qualified majority in the Council (Environment).

II. STATE OF PLAY

The aim of the proposal is to provide for a legal basis in the related EU legal framework in order to authorise Member States to restrict or prohibit the cultivation, in all or part of their territory, of Genetically Modified Organisms (GMOs) that have been authorised at EU level.

In order to reach a political agreement in the Council, the Danish Presidency prepared a compromise text which was inspired in recently agreed EU legislation on biocidal products.

At its meeting on 29 February 2012, the COREPER felt that the said compromise text and delegations' comments constitute a good basis for a political debate at the next "Environment" Council with a view to reaching a Political Agreement. Discussions also showed the willingness of a large majority of delegations and the Commission to achieve such an agreement while some delegations continued to express misgivings on the proposed approach.

In the light of discussions held, the Danish Presidency submitted a revised compromise proposal (document 7153/12) with a view to reaching a Political Agreement (first reading) at the Council (Environment) on 9 March 2012. This revised text gave a large group of Member States the possibility to restrict or prohibit the cultivation of a certain EU authorized GMO on their own territory, whilst trying to accommodate the concerns of the group of Member States that is opposed to introducing such a possibility.

It was not possible for the Presidency to reach a political agreement at the "Environment" Council Meeting on 9 March 2012 as a blocking minority of delegations opposed to the said compromise proposal. DE, FR, UK and BE as they found the proposal in conflict with the single market, concerns on the compatibility with WTO, renationalisation and implementation of the 2008 Council Conclusions. SK was not able support the proposal and ES announced at the March Council meeting that they were not able to support the compromise proposal in March but would be able to support the proposal at the June Council. Ireland expressed certain reservations with the Presidency proposals, suggesting that the number of unresolved issues required further technical refinement.

CY and SI opposed, as they wanted the environmental reasons for restricting and prohibiting the cultivation of GMOs included in the article.

Following the outcome of the “Environment” Council on 9 March 2012, the Presidency undertook to consider options for a political agreement in the future.

III. CONCLUSION

Since the “Environment” Council Meeting on 9 March 2012 the Presidency has held informal consultations with delegations, in particular, the blocking minority in order to examine how a change in delegations' positions could possibly be achieved. This examination showed that it won't be possible to dissolve the blocking minority that is opposed to the Presidency compromise proposal.

Despite the fact that significant progress has been made, the Presidency, taking into account the outcome of the informal consultations and Member States views at the COREPER meeting on 31 May 2012, is concluding that a political agreement on the GMO dossier is not possible.

Consequently, at its meeting on 5 June 2012 the COREPER unanimously accepted the Presidency's suggestion that a Progress Report should be forwarded to the next Council (Environment) on 11 June 2012, under an "A" Agenda Item.
