



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat
to : Delegations

Subject : Genetically Modified Organisms - A Way Forward
– Information from the Austrian delegation

Delegations will find annexed a note from the Austrian delegation, supported by BG/IE/EL/CY/LV/LT/HU/LU/MT/NL/PL/SI, on the above subject, which will be dealt with under "other business" at the meeting of the Council (Environment) on 25 June 2009.

Genetically Modified Organisms – A Way Forward

Note submitted by the Austrian delegation, supported by Bulgaria, Ireland, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Poland and Slovenia

Background

The authorisation of GMOs is one of those rare subjects of EU legislation where no qualified majority has been achieved in recent years. In accordance with Council Decision 1999/468/EC on Committee Procedure and in the absence of a qualified majority, it has primarily been the European Commission which has adopted decisions for the authorisation of GMOs.

On four occasions, a qualified majority in Council voted against EC proposals to lift the safeguard clauses invoked with regard to certain GMOs by several Member States: in June 2005, in December 2006, in February 2007 and most recently in March 2009. These safeguard clauses concerned in particular GMOs approved for cultivation.

The French EU Presidency showed great initiative by establishing the Ad hoc Council Working Party on GMOs in the second half of 2008, which resulted in unanimous Council conclusions on 4 December 2008. These Council conclusions called *inter alia* for a strengthening of environmental risk assessment, more freedom for Member States to decide upon GMO-free zones on their national territory and the appraisal of socio-economic benefits and risks.

The Netherlands delegation came up with a declaration at the last Environment Council on 2 March 2009 calling for Member States to have the right to decide for themselves on the cultivation of GMOs. The Netherlands government proposed that, without changing the general authorisation procedure for placing GMOs and GMO products on the market, authorisations for GMO cultivation should be granted at national level. The delegations cited above appreciate this initiative and are willing to develop it further in order to find a satisfactory long-term solution.

The Way Forward

The time has come to find a way forward to deal with the authorisation and use of GMOs in agriculture.

In addition to risk based assessment (safe for human health, animal health and the environment), the delegations supporting this initiative are of the opinion that relevant socio-economic aspects should play a role in the authorisation of GMOs and GMO products. They could also form a basis for individual Member States to prohibit or regulate the cultivation of GMOs on the whole territory, or certain defined areas, of individual Member States. There is currently no methodology available for defining and evaluating socio-economic criteria. Such criteria could be discussed and agreed upon during the process of discussion on socio-economic aspects that started with the adoption of the Council conclusions of 2008.

Without prejudice to the outcome of this process, we believe that options should be considered which could allow Member States to decide for themselves as regards cultivation, without changing the general authorisation procedure for placing GMOs and products thereof on the market. In this context it should be noted that the Commission has started a process to re-evaluate the respective Regulations on GMOs, i.e. Directive 2001/18/EC and Regulation (EC) No 1829/2003.

The legally soundest solution we envisage is a set of minor amendments to relevant EU legislation, which should introduce the right of an individual Member State to restrict or prohibit the cultivation of authorised GMOs on its territory. The amendments could be based on the subsidiarity principle (Article 5 of the Treaty establishing the European Community) and the principle of unanimity for decisions on land use (Article 175 of the Treaty establishing the European Community). Such an “opt-out” clause could be formulated in quite straightforward legal terms and could easily be integrated into the existing legislation.

The Member States supporting this initiative urge the Commission to put forward a proposal on the basis of this discussion on GMOs and possible additional options, with the common goal of finding a solution acceptable to all Member States as soon as possible.

All Member States supporting this note are willing to discuss any further options and proposals which might arise.