

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

2010/0208(COD) - 22/11/2010 - Document attached to the procedure

The Commission presents a Staff Working Document which gives consideration to the legal issues on GMO cultivation raised by the Council's Legal Service. It recalls that the initial proposal in question amends Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms. The amendment inserts a new provision which would provide Member States a legal base to adopt if they wish measures restricting or prohibiting the cultivation of all or particular GMOs authorised in accordance with Part C of the Directive or Regulation (EC) No 1829/2003 in all or parts of their territory, subject to certain conditions.

The Council's Legal Service examined several issues related to the choice of legal basis for the proposal, type of national measures that could lawfully be adopted by Member States on the basis of the proposal, and the compatibility of any such measures with the GATT. It concluded that the **proposal as it stands is not validly based on Article 114 TFEU; and that there were strong doubts about the compatibility with the Treaties or with the GATT** of any measures the Member States might adopt in reliance upon the new provisions of Directive 2001/18/EC.

This document sets out the reasons why the Commission's services disagrees with these conclusions, and with the main legal reasoning provided in support thereof.